# IN THE
# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1965

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No. .....

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EDWARD RUTLEDGE GISH, *Petitioner*

*v.*

STATE OF MISSOURI, *Respondent*

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## PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE UNITED STATES

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EDWARD RUTLEDGE GISH, *Pro Se*

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The Petitioner prays that a writ of certiorari issue to review the judgment of the Supreme Court of Missouri and the St. Louis Court of Appeals entered in the causes set out below by number and date.

Petitioner prays that a writ of certiorari issue to review the violations of the constitutional rights of the petitioner in the trials, convictions and related judgments occurring in the Circuit Courts of Missouri and the St. Louis Court of Appeals which the Supreme Court of the State of Missouri refused to transfer for review before the Supreme Court of the State.

### ACTIONS TO BE JOINED FOR REVIEW

Cause 31109 in the St. Louis Court of Appeals on appeal from conviction of careless and reckless driving; not transferred. (State Supreme Court number 50528)

Cause 31928 in the St. Louis Court of Appeals; not transferred to the Supreme Court of the State. (number 51449);

The Motion to quash special execution in cause 31109 on the basis of violation of the due process clause of Art. I, Sect. 10 of the State Constitution and the Fourteenth Amendment of the Constitution of the United States.

Cause 31495 in the St. Louis Court of Appeals from conviction for speeding. Not transferred to the Supreme Court of Missouri. (number 50819)

Cause 32149 in the St. Louis Court of Appeals pending; a Motion to quash special execution in 31495 on the basis of violation of due process law violating the Art. I Sect. 10 Constitution of the State of Missouri and the Fourteenth Amendment of the United States Constitution. In the next paragraph is noted a motion pending to move to transfer cause 32149 to the Supreme Court on basis of the Appeals Court being an adverse party to the Petitioner, because it has failed to come to grips with corruption of the court and intimidation of the Petitioner by judges of this court.

In addition, appeal is now in state of being perfected in a related cause but is delayed because the Warren County Circuit Court transcript will not be forthcoming for more than a month. This appeal challenges an unlawful action in which the judge who sat on the bench in the Warren County Circuit, and the Prosecuting Attorney who moved to Dismiss the (Petitioner's) Petition for a "Writ of Coram Nobis" had no jurisdiction to act, and no cause to act on since they are accused of being adverse parties in the Petition and each had been subpoened as a witness for the defense, prior to the hearing. Both Judge and Prosecutor refused to be sworn or to answer questions in the court. This was action taken as the original Cause 925 but charged to Cause 32149 in the St. Louis Court of Appeals.

There is pending a motion filed 30 June 1965 to transfer St. Louis Court of Appeals Cause 32149 to the Supreme Court of the State of Missouri for action forthwith. No action has occurred.

The Petitioner (in order to preserve his cause in event the

transcripts are not forthcoming from the St. Louis Court of Appeals within the time which has been extended to September 9, 1965, by the Supreme Court of the United States and in fairness to the Missouri Supreme Court) has made to the Supreme Court of Missouri a Motion to Vacate Judgements and set aside convictions and decisions in Causes 31109, 31924, 31495, and 32149, in a petition in the nature of a Writ of error coram nobis, on 20 August 1965.

The original request to the Supreme Court of the United States for extension of time was solely in regard to Cause 31928, the Motion to Quash Execution in Cause 31109.

After the initial petition had been sent to the clerk of the Supreme Court of the United States, the petitioner was threatened with physical violence within the precincts of the St. Louis Court of Appeals Clerk's office, by the presiding judge.

In this petition all proceedings are joined since Petitioners Causes no longer lie in true courts of equity. The Petitioner submits for certiorari all the above causes and prays that if the transcripts are not available, the judicial notice be taken that the Petitioner has moved to vacate judgment in ALL FOUR CAUSES IN ONE MOTION to the Supreme Court of Missouri, so that he may not be out of court in his petition for writ of certiorari to the Supreme Court of the United States because the transcripts are possibly delayed.

This Motion to the Supreme Court of Missouri to Vacate Judgments and requesting action forthwith, has been filed and will be pending at the same time the Petition for writ of certiorari comes to the Supreme Court of the United States.

The Petitioner has been willing to give his life in defense of the principles involved in these cases, and prays the Court grant time relief on the basis of the Motion to Vacate Judgment *(supra)* filed 20 August 1965 in event the transcripts are not forthcoming by 9 September 1965.

The Petitioner does not impute any improper act to the Clerk's office. There is a tremendous amount of paperwork.

The Supreme Court could call up the original file which would be fully merited by the allegations below.

In all the above causes in the St. Louis Court of Appeals, the Supreme Court of Missouri refused to transfer and review after a proper motion to rehear and transfer had been made to the St. Louis Court of appeals, except in Cause 32149 where action is pending. They are therefore final decisions and reviewable by the Supreme Court of the United States under the violation of the Fourteenth Amendment to the Constitution of the United States.

## Citation of Opinions

The opinions given in Causes 31109, 31495, and 31928 are listed in Appendix A. The Cause 32149 is still pending as is its companion, Warren Circuit Court 925 as recited above.

## Jurisdiction

The Petition for a Writ of Certiorari to the Supreme Court of the United States is based on violation of the Fourteenth Amendment of the Constitution of the United States which protects the rights of the Petitioner who was convicted under the criminal Statutes of the State of Missouri (Misdemeanors are set out *supra*). The seeming triviality of the charges and the fines incurred by the Petitioner might lead some to believe that the Petitioner approaches the Supreme Court of the United States of America with trivial prayers. Such is not the case. Herein will be found the challenges to the Appellate system of law and to Due Process and Equal Protection of the law which had to be met, for the STATE is the criminal in these causes.

The Petitioner alleges that the entire proceedings from the time of inception in 1960 which he believes was prior to his arrest, through the arrest, trials and all hearings until the present August 1965 are infected with fatal irregularity.

Causes 31109, 31928, 31495 have reached the highest court

and have been denied transfer to the Supreme Court of the State of Missouri. Action on Cause 31495 is still pending in the nature of a Motion to Quash special execution on Appeal in the St. Louis Court of Appeals as Cause 32149.

Causes 31109 and 31928 have been fully executed, the cash appearance bond having been seized at court order. It was known to the Prosecuting Attorney that the Petitioner planned to go to jail to fight through habeus corpus if necessary for the Petitioner had told the Prosecuting Attorney, face to face, that he would fight these cases to the last day of a jail sentence if necessary.

Cause 32149 is now so infected with irregularity that the St. Louis Court of Appeals cannot act as a court of equity in the matter, having acquiesced in the corruption of that court. The Supreme Court of the State of Missouri has not transferred the cause after motion to do so forthwith.

The four causes have never been joined as one for the Supreme Court of the State of Missouri to review. They are now joined in the Motion to Vacate Judgment in a petition in the nature of a writ of coram nobis.

The Appellant has now made the above move since the last possible action at the Circuit Court level for petition for writ of coram nobis has been heard. The coram nobis petition was decided adversely to the Petitioner 26 July 1965, in an action unlawfully taken by the Circuit Court, both Judge and the Prosecutor, who were subpoened as witnesses for the defense prior to trial refused to disqualify themselves. When called to be sworn and answer questions bearing solely on the procedure in the court, each refused to be sworn; each refused to answer questions asked. They continued with the proceedings to Dismiss the Petition for a Writ of Coram Nobis without a hearing ON THE FACTS IN THE PETITION which accused the Prosecutor of fraud, criminal deception, collusion, knowing suppression of evidence and information, and knowing use of a perjurer as the only prosecuting witness.

The judge knew that the court had been accused of allowing

two transcripts in trial and hearing to issue over its signature which were documents allegedly altered with intent.

Before any appellate decision given IN ANY CAUSE the first record had been challenged as altered with criminal intent corrupting the Courts.

## Questions Presented for Review

1. Can the state lawfully convict a person of committing two different violations of criminal statutes while ACTING IN PERSON at two different places at the same time? Prosecuting attorney and prosecuting witness the same in both cases.

2. Can the state lawfully use testimony to convict by the same prosecuting attorney, using the same prosecuting witness in two different trials on two different charges, such testimony known to both to convict the accused of committing two totally different and physically irreconcilable actions on the very same 3,000 feet of highway at the same time?

3. Is there to be no recourse to the accused from alteration of his trial transcripts with criminal intent to deprive him of his sworn testimony in his own defense and to substitute words never uttered to help convict him? The evidence and the witnesses are available to support the charge, and profert of proof was made face to face with five judges and commissioners on the bench; and made when the Supreme Court of the State denied the Petitioner a mandamus to force a reasonable discretion in unveiling the criminality corrupting the courts. Is this not a suitable case in which to act by first impression wherein the Supreme Court of the United States reviews such a charge, since this is an action of the State against a citizen? The State in almost entirety, violated the due process and equal protection clauses of the Fourteenth Amendment arising from the law of the land. Herein the charge of violation of the Fourteenth Amendment is laid to the Judicial, executive, legislative committees, administrative and ministerial officers, including the prosecuting attorney and State Patrol.

The Petitioner has and does challenge the entire weight of

the State which in its officers in these various capacities has acquiesced if not participated in the violations, by withholding the powers of their offices.

The Petitioner prays that the entire record be called to the courts presence including the sound tracks of the trials, the sound recording having been made in each trial and hearing in the above causes.

If the state abandons its obligations and duties to protect the citizen from criminality of the state itself, the state abandons its reason to exist, unless the highest court in the land once again summons all to abide by the law, even the state itself.

4. The Petitioner alleges multiple violations of the Fourteenth Amendment of the United States Constitution—fraud, corruption, perjury, knowing use of perjury, suppression and destruction of evidence, unlawful proceedings in court and others being set out infra, these being violations of due process AND withholding of the full and equal protection of the laws.

5. The question is raised whether an attorney can knowingly advise his client falsely in regard to the constitutional right to challenge a juror for cause at the voir dire proceedings, where it is intention and not inadequacy of the counsel. It has been held that the state is not responsible for acts of the defense counsel since the state does not thereby deny due process through acts of prosecution. BUT the state licenses and the counsel approaches the court in that right.

A defendant cannot be expected to know all the points of law, if so he would not need counsel. The accused cannot be expected to know when he is told that "three challenges used up his right to challenge" that his attorney was in collusion at least IN HIS MIND with the State. When it extends to deliberately deceiving the accused as to his constitutional rights in regard to challenge of a juryman, is this not constructive fraud, sufficient to deny due process, for the counsel for the defense acts in concert thereby with the prosecution?

6. The Petitioner raises the question as to whether or not it is a violation of due care in regard to evidence, and therefore

a violation of due process when the accused and his wife, in order to avoid litigation such as has arisen in these causes, were not granted the privilege to take polygraphs? The Petitioner as accused was not making a simple request, but claimed that criminal actions surrounded his arrest. The privilege of polygraphs, suitable at least for screening purposes, is frequently allowed to those under charges of criminal activity. The offer to take polygraphs was made by the accused and his witness-wife before arraignment. It is known at all levels of the state that the purpose was not just to exonerate the Petitioner, but to expose criminality within the State of Missouri on its highway; and later criminality in its courts, and in the treasury of the State. Many not even charged are given polygraphs.

7. It has been held that examination of an accused outside of his testimony in chief, is not a violation of due process at state level. However the Petitioner raises the question, whether it was or was not a violation of the accused's rights to be forced to testify in order to further his conviction, by his own testimony alone, when he had not testified to the *speed* of the truck, nor to his own *speed* when he testified to the *passing* of a truck. If a person does not mention speed, and the state has never charged or alleged violation of speed in this particular pass, can the state force the testimony from him over protest of Counsel? The interesting facet of this case is that the truck the accused was forced to testify to "passing in excess of the limit" HAD NEVER BEEN ALLOWED TO EXIST BY THE STATE. The testimony which the state forced from the accused over protest of counsel WAS THE VERY SAME TESTIMONY WHICH THE STATE HAD COMPLETELY OVERTHROWN (IN ITS ENTIRETY) to convict the accused at another trial on a different charge.

8. The Petitioner challenges the *transcripts* in Causes 31109, 31928, 31495, and 32149 all actions in the St. Louis Court of Appeals, as altered documents, corrupting the courts of the State of Missouri. The transcripts have been challenged as fraudulent for more than three years in Cause 31109 with

profert of witnesses and evidence without any hearing whatsoever; and for more than two years in Cause 31495.

The Petitioner therefore states that the Supreme Court of the United States will be reviewing fraudulent documents which have been clearly and at all levels challenged as fraudulent, thereby corrupting the courts of this state.

These charges are of such grave nature that the Petitioner, Edward Rutledge Gish, will make the profert of proof to the Supreme Court of the United States, or to any designate of the court.

9. The Petitioner has repeatedly called attention of the Courts of the State of Missouri in various petitions and motions, that failure to challenge the dangers presented in the criminal alteration of trial transcripts, admits such practice as a normal thing. The Petitioner therefore feels that failure of his cause now being fought, will allow such practices to be RES JUDICATA. Will not this establish a clear precedent which if generalized will be a blow fatal to the appellate system of jurisprudence?

Further, the multiple violations of good practice and fair administration of the law combined with the many violations of due process AND withholding of equal protection of the law, will ultimately overthrow the common law rights under the Fourteenth Amendment of the United States, unless the acts are stricken.

10. These cases raise a most interesting point. Can a State convict in one trial on one charge convicting on the state's testimony of one witness and overthrowing the defense testimony in its entirety and then on a second charge convict, using the testimony of the defense which it had overthrown entirely in the first trial to help convict of the charge in court and allow instructions to convict on the act testified to in the defense testimony in addition? Allowing the defense testimony in the second trial completely and totally impeaches the testimony in the first trial. The two cases impeach each other. Which case

must fall, since the state cannot overthrow the defense entirely in one cause and accept the defense's same sworn testimony as fact in the second trial?

11. An interesting corollary of this occurring in 31495; and 32149 the motion to quash the conviction in 31495. Can the state, having accepted the entire sworn testimony of the defense forced over protest of counsel, use the testimony to convict in trial 31495 then put its own sworn testimony which it used to convict in 31109 back as a fact in 32149 the motion to quash the execution of 31495 such testimony completely overthrowing the defense testimony once again without impeaching the trial 31495 as well as the trial of 31109? Even if it occurred by mistake, inadvertence, without any prior knowledge as MIGHT OCCUR IF THERE HAD BEEN TWO DIFFERENT prosecutors (and not the same prosecutor and same state witness as in the petitioner's causes) and disregarding any possible intent or perjury known to the state WOULD NOT THE FACTS ALONE AS THEY STAND IN THE RECORD OF TRIAL 31495 impeach THE CASE of the state in 31109 and then 32149 impeach the case of the state in trial 31495? The State is impinged on horns of a dilemma of its own creation.

12. Can the state take part of the defense testimony sworn as one continuing action, running without interruption, without taking the whole of the sworn testimony, such testimony having been overthrown in regard to the action in a previous trial?

## Statutes Involved

The Fourteenth Amendment in its due process clause and equal protection clause are involved in this Petition for Writ of Certiorari. The Petitioner alleges multiple violation of his constitutional rights under the Amendment as set out *infra*.

The Supreme Court is thereby asked, "Can it fail to take judicial notice that the Petitioner for this writ of certiorari, is, as was plainly written in the first motion to correct the trial transcript, defending the integrity of the courts themselves,

and protecting the basic concepts of jurisprudence AS HIS DUTY HAS REQUIRED?"

Since all these cases have in the past been challenged as violating Article one, Section ten of the Missouri Constitution, and the Fourteenth Amendment of the United States Constitution, this petition for the writ of certiorari rests on the multiple violations of the Fourteenth Amendment in the due process and equal protection clauses.

In England the requirement of due process of law was originally designed to secure the subject against arbitrary action of the crown and to place him UNDER THE *PROTECTION* OF THE LAW and the words were held to be equivalent to the law of the land. Mo Pac RR v Hume 6 SCt 110,112;115 US 512;29 L ed 463. State v Loomis 22 SW 350,351;115 MISSOURI 307;21 LRA 789.

The Fourteenth Amendment to the U. S. Constitution secures to all the full protection of the laws. State v Travelers Ins. Co. 76 Conn 255;47 A 299,aff 185 US 364;46 L ed 949,22 S Ct. 673.

The privileges and immunity clauses within the meaning of the USCA 14th Amendment means that they should be held and enjoyed alike by all persons within the jurisdiction of the State. Ward v Flood 46 Cal 36.

Constitutional guarantee of equal and full protection of the laws requires that all persons shall be treated alike under like circumstances and conditions both in the privileges conferred and the liabilities imposed. Stone v Jefferson 317 Missouri 1; 293 SW 780.

> The surrender of fundamental rights is not within the power of the individual if PUBLIC INTEREST is thereby prejudiced. Cameron v International Alliance TSE 118 NJ 11; 176 A 692.
>
> The only legitimate end of government is TO PROTECT the citizen in the enjoyment of life, liberty and property. Singer Sewing Machine Company v Brickel 233 US 304, 58 Led 974, 34 S.Ct. 493.
>
> In Gideon v Wainright 372 US 335, it was pointed out that in the application of the concept of due process there is always

danger of falling into the habit of formulating the guarantee into a set of hard and fast rules the application of which IN A GIVEN CASE MAY IGNORE the QUALIFYING factors that are therein disclosed.

When a man enters the courts the law CAN PERMIT NO RULE TO FETTER HIM in the prosecution of his claims or preservation of his rights which does not apply equally to others respecting the same kind of case. Bogni v Perotti 224 Maaa 152, 112 NE 853.

The existence of state action within the purview of the equal protection law can be determined only in the framework of the PECULIAR FACTS or PECULIAR CIRCUMSTANCES OF THE CASE. Burton v Willmington Parking Authority 365 US 715; 6 Led 2d 45; 81 S Ct 133.

The concept of liberty contained in the 14th Amendment, U. S. Constitution is constantly enveloping the protection of more and more fundamental rights. Sinclair v State 161 Miss 142; 142 SO 581.

Questions of Due Process are not to be treated narrowly or pendantically in slavery to FORMS OR PHRASES. Pearson v McGraw 309 US 313.

In determining whether the requirements of the 14th Amendment USCA have been observed, regard must be made to the SUBSTANCE RATHER THAN THE FORM. Frank v Mangum 237 US 309.

## Statement

In 1960 the Petitioner had filed for congressman in the democratic party primaries. While campaigning he had been unlawfully harassed by the State Patrol less than sixty days before the arrests which occurred on the night of 18 September 1960 (after the August primary election). The Petitioner had been in St. Charles, Missouri on that afternoon and met with politicians. The route he was using for trip home and hour of return from a ballet was KNOWN because he HAD BEEN ASKED BY WHAT ROUTE HE WOULD RETURN.

On crossing the Missouri River bridge into St. Charles County (that night) the Patrolman was waiting with his lights directed obliquely into the face of cars so that he could see the driver. For a distance of more than one and one-half miles east

of the west end of the bridge the Petitioner saw the grain truck ahead BUT NO OTHER TRUCK. He followed the grain truck and passed it on the four lane highway. The weight station passed was CLOSED and the TRUCK DID NOT TURN IN. Duty rosters show no one was on duty in the weight station at that time. The Petitioner came up behind a car behind a truck, this truck being a CATTLE TRUCK WHICH HAD NOT BEEN SEEN EAST OF ST. CHARLES COUNTY. In an OPEN ZONE the Petitioner passed the car, and could have passed the truck in the same zone, but the truck suddenly threw its rear wheels over onto the middle of the road, blocking the road for 450 feet of open zone, and 480 feet of yellow line. The same bright lights at the bridge came around and squeezed in on the bumper of the Petitioner at this time. In an OPEN ZONE at the top of the steep hill, the truck pulled over going 50 to 55 miles per hour. At this point there is 2,000 feet of visibility and 1,100 feet of open zone. The Petitioner signaled properly and started to pass moving rapidly up front, but not over the speed limit, and anticipated an easy pass, since the truck had been followed down other hills and had never reached 60 miles per hour. The car behind with intense bright lights swung out behind the Petitioner as he was at the head of the truck. The car behind sat on the tail of Petitioner's car making it impossible to see to brake and to fall back, so the Petitioner while he still had about 450 feet of open zone, decided to complete the pass.

The Petitioner needed only two full lengths to clear the truck and swing over, but it was a difficult task for the truck raced the Petitioner to the yellow line. The Petitioner knew the yellow line was ahead and his wife saw it but at that very moment the Petitioner told his wife there was no choice. Yellow lines in the State of Missouri have no legal significance not being on the highway by statute. As the Petitioner went forward to clear the highway exceeding the speed limit ONLY AFTER HE HAD NO CHOICE AND WAS TRAPPED AND UNDER DURESS, as well by the speeding cattle truck which was

empty, as by the tailgaiting car, he clipped a piece of the line.

The Petitioner let his speed drop back to normal under 65 and continued on his way home. He was overtaken and arrested. The Patrolman charged the Petitioner with speeding 80 miles per hour (and if clocked in this tailgated trap by the Patrolman he would consider it possible), but he saw only 70 on his own speedometer. In the last few hundred feet the Petitioner was watching to see that nothing was coming and not watching his speedometer. There was no oncoming traffic at this time nor for another 2,000 feet. Further the Petitioner was not accused of passing the cattle truck beginning in an open zone but of passing a tractor trailer freight truck on the next hill pulling out to pass on the double yellow line.

At time of arrest the Patrolman would not say WHERE THE OFFENSE OCCURRED and would not say where the speeding occurred so the Petitioner assumed he meant the pass of the cattle truck. It was not until two weeks after arrest that the Petitioner knew for the first time that he was accused of speeding AFTER he passed the cattle truck. The Patrolman would not fill out the summons, and tried to force the Petitioner to sign it anyway. He would not say where the offenses occurred nor tell where the Petitioner was in relation to the highway landmarks AT THE TIME OF ARREST WHICH WAS AND IS OF PRIME IMPORTANCE.

The Patrolman admitted he was the car "tailgating." He said he would have the Petitioner picked up and thrown in jail if he didn't show up on a date when the Petitioner would be out of the country. The Petitioner asked to be taken to the Sheriff since the Patrolman kept trying to force the Petitioner to sign a blank summons. The Patrolman then drove off with Dr. Gish leaving the wife of the Petitioner standing on the roadway and the 12 year old daughter in the car not knowing if Mrs. Gish had the keys. The Patrolman drove a mile west, turned into a private filling station, turned out his lights.

He then TURNED ON HIS radio and called for his sergeant, then for two of the highest ranking officers of the State Patrol.

The conversation was supposed to have been with Troop C headquarters at Kirkwood. Such calls particularly where there is trouble are monitored by the state radio at each Troop and recorded on tapes. These tapes were vital to the defense. They were destroyed in spite of great effort on the part of the Petitioner and the defense counsel to get to them.

The Trooper then drove east as if to take the Petitioner to Troop C headquarters in the next county rather than the Sheriff's office in St. Charles County. After driving east where he could see THE WEIGHT STATION, where there is a radio, he then turned to St. Charles and did not call Kirkwood. At St. Charles he made the motion of calling Kirkwood but his radio had not been on and he called without turning it on. The Patrolman tried to get the Petitioner to sign the one summons in the Sheriff's office but when the Petitioner said he had a right to read it and tried to place his hands on it, the Patrolman jerked it away. A second man in powder blue uniform similar to the State Patrols came in and signaled the trooper to the back room. When they returned the Petitioner's glasses were taken away and minor assault committed on him in an attempt to stampede the Petitioner into action, by giving the backhand to the Petitioner's testicles when he was being searched. The officers tried to prevent the Petitioner's calling for bail, and tried to prevent the Petitioner from giving any money to his wife for lodgings or to have if she drove home. She had only one dollar and was ninety miles from home. The Petitioner made bond, but had to sign without knowing what he was signing because he still had no glasses with which to read. No copy of the bond, no summons, no information of arrest was ever furnished by the state to the Petitioner. The Petitioner lodged a complaint. A Lt. Smith came as investigating officer and turned out to be the officer whose number the trooper called for on the night of arrest. He falsefied some of his report and omitted other information from the report. Later he withheld vital information from the defense. The trooper report was suppressed and the prosecution knew that the troop-

er's report overthrew the state's case. The report of Lt. Smith did record most of the Petitioner's statement and was in possession of the prosecution AND MADE AVAILABLE TO THE TROOPER. The Petitioner and for his wife offered to take polygraphs within 72 hours of the arrest.

The state overthrew the statements of the Petitioner related in this statement IN EVERY DETAIL in eighty of ninety points which are set out in the Motion to Vacate Judgment made the Supreme Court of the State of Missouri August 1965. The grain truck, cattle truck, and the car passed were eliminated. The Petitioner ended up being convicted of passing a tractor trailer freight truck on a double yellow line, no such pass by the Petitioner ever having occurred, anytime, and no such tractor trailer freight truck ever existing. The Petitioner was convicted of speeding on the very exact spot of the highway and actually being pursued by the same trooper driving the same patrol car at 80 miles per hour at the very place where the Petitioner WAS SEATED IN THE PATROL CAR UNDER ARREST BY THE SIDE OF THE ROAD NOT MOVING OR HAVING HIS HANDS ON THE WHEEL OF AN AUTOMOBILE.

### Allegations and Citations as Part of the Statement

The Supreme Court of the United States does not need a hundred citations, for they know the law. All cases must stand on own merits before the courts, and if the Petitioner does not write into his petition what he should, he cannot ask the Court to do it for him later.

The principles of law run in the blood of every case, so that even when there are no citations which can be given to cover exactly what has happened to the Petitioner, the basic concepts and principles can be cited as such rather than a case as such. The Petitioner therefore, cites the principles as they have been related in the cases, and not the events and situations as such. The basic principles of common law hold in almost every cause, whether criminal or civil, unless there is statutory limitation.

Because of the multiplicity of violations of the Petitioner's

rights and the multiple failures of law within the courts, such multiplicity goes far to suggest a meeting of the minds in conspiracy to convict the PETITIONER AND TO KEEP HIM CONVICTED. This suggests another violation of due process and withholding of equal protection by the compounding of errors at law and judicial process.

For these reasons the citation of cases will be put within the paragraph of each allegation rather than at the end of the allegation in a compact group of citations. SOME OF THESE CASES FIT THE ALLEGATION RATHER EXACTLY. IN OTHERS CITED, ONLY THE PRINCIPLE ENUNCIATED IS APPLICABLE TO THE Petitioner's rights which have been violated.

Personal liberty largely consists of the right of freedom to travel and of locomotion (Kent v Dulles 357 US 886, 6 L ed 2d 1204,78 S Ct 1113). One may therefore under normal conditions travel at his inclination on the highways and while conducting himself in an orderly and decent manner neither interfering with nor disturbing another's right, HE WILL BE PROTECTED, NOT ONLY IN HIS PERSON BUT IN HIS SAFE CONDUCT (Pinkerton v Verberg 78 Mich 573 44 NW 579) and this right to travel includes the opportunity to do those things which are ordinarily done by free men (State v Kratberg 114 Wis 530,90 NW 1098), including the rights of self defense against violence or the threat thereof (State v Missouri Tie and Timber 181 10536,80 SW 933, State v Loomis 115 Mo 307, 22 SW 350).

The restrictions under the 14th relate to cover all agencies of and instrumentalities by which the state acts (State v Parkey 203 OR 697) and impose limitations upon all powers of the state which can touch individuals or his property (State ex Rel Dalton v Metropolitan St. Louis Sewer Dist; 365 MISSOURI 1;275 SW 2d 225); and extends to all action of the state denying equal protection of the laws whatever the agency of the state taking action or whatever guise in which it is taken

(Cook v Davis US CA 5ga 178 F 2d 595; Cooper v Aaron 358 US 1,20; 3L ed 2d 5 19; S Ct 1401). He who acts for the state and in the name of the state and is clothed with the state's powers, HIS ACT IS THAT OF THE STATE (Home Telephone and Telegraph v Los Angeles 227 US 278; 57 L ed 510; 33 S Ct 312; Blake v McClung 172 US 239; Jaurez v State 102 Tex Crim 297;277 SW 1091), and this includes every person natural or judicial who is repository of the State's power. A case where one in possession of state power uses that power to accomplish the wrong doing which is forbidden by the 14th Amendment is within purview of the amendment if the consummation of the wrong itself is rendered possible or is efficiently aided by the state authority lodged in the wrongdoer (Home Tel&Tel v Los Angeles supra; Iowa Des Moines Nat. Bank v Bennett 284 Us 239; 76 L ed 265; 52 S Ct 133).

1. FRAUD—The using of false representation to obtain an unjust advantage or to injure the rights and interests of another —dishonest tricks. A conviction or decision achieved by the State through FRAUD in trials and hearings where the original charge is violation of criminal statutes is void.

> The writ of coram nobis cannot be used to cure irregularities at trial except under circumstances of extrinsic fraud which actually deprive the accused of trial on the merits. People v Kerr 133 Cal App2d 90, 247 P2d 927.
>
> Coram nobis is available in cases which involve abrogation of fundamental precepts resulting in the perpetration of a fraud upon the court. People v Sullivan 3 NY2d 196; 165 NY2d 6; NE2d 6.
>
> Coram nobis restores a criminal case to the docket because the original trial is vitiated by a fraud or collusive act not known to the defendant perpetrated by the State of a matter which had it been OVERT would have prevented the original judgment. Willis v Ala State, Ala App 152 SO2d 883.

2. CORRUPTION OF THE COURTS OF THE STATE OF MISSOURI within the proceedings herein challenged.

Any witness who testified willfully or for purpose of con-

cealing the truth would be within the meaning of corruption. Chicago City RR v Olis, 94 Ill App 323.

Corruption includes every class of crime amounting to felony when intentionally committed by ministerial or judicial officers. When the act is done corruptedly it is done with intent to obtain improper advantage inconsistent with official duties and the rights of others.

Corruption as applied to public officials is hard word to define covering a multitude of delinquencies great and little. Strictly accurate apply to any COLOR OF INFLUENCE or mere relation of any kind on the ADMINISTRATION OF JUSTICE. Wight v Kindskopf 43 Wis 344, 351.

The constitutional guarantee may be violated by *unfairness* or *corruption of officers*. 98 ALR 411.

3. DECEPTION VERI is the knowing deception of the jury, the courts, or the adverse parties under charges of violation of criminal statutes by failing to speak out when in their minds they have the knowledge favorable to the accused. It is herein the same as suppression veri to distinguish it from suppression of records, information, etc., on the part of the State. It is alleged against the State in this petition.

SUPPRESSION VERI is a FALSE PRETENSE as withholding the truth when IT SHOULD BE UTTERED. Turhey v Avery 113, A 710; 92 NJ Eq 351.

SUPPRESSION—"Where there is an obligation to speak, failure to speak will constitute suppression" (Chicora Fert Co v Duncan 46A 347, 351; 91 Md 144). The Prosecuting Attorney Donald Dalton, Patrolman Medley, Judge Adams of the Warren Circuit, Judge Clemens of the St. Charles Circuit Court, Capt. Smith of the State Patrol, Col. Waggoner of the State Patrol, former Attorney General Eagleton and Attorney General Anderson have not met their obligations to speak out where the Appellant is concerned.

4. CRIMINAL DECEPTION OF THE PETIT JURIES of the St. Charles Circuit Court in the trial of the passing charge 31109 and of the Warren County Circuit Court jury in the speeding charge 31495 by Prosecuting Attorney Donald Dalton and Trooper Medley, and of the St. Louis Court of

Appeals, and the Warren County Circuit Court by Prosecuting Attorney Donald Dalton.

The Fourteenth Amendment protects the citizen against the STATE ITSELF and acts of its creatures. West Va State Board of Education v Barnette 319 US 624, 63 S Ct 1178.

The Fourteenth Amendment restrains the abuse of governmental power in its exertion of its authority (Louisville and Nash RR v Malton 218 US 36, 54 Led 921, 30 S Ct 676). Trooper Medley arrested in the name of the State and Prosecuting Attorney Dalton acts for the State.

A case where one in possession of state power uses that power to accomplish the doing of wrongs which are forbidden by the 14th Amendment is within the purview of the amendment if the consummation of the wrong itself is rendered possible or is efficiently aided by the State authority lodged in the wrongdoer. Home Tel and Tel Los Angeles 227 US 278; 52 S Ct 133.

Due process has to do with fundamental unfairness shocking to the universal sense of justice; it deals neither with power nor with jurisdiction but with their exercise. Kinsella v US 361 US 234, S Ct 297.

Procedural due process contemplates the rudimentary requirements of *fair play*. Vernon v State 245 Ala 633, 18 SO2d 388.

Any person who by virtue of public position under government deprives another of any right protected by the 14th Amendment violates due process of law. Chi B Q RR v Chicago 166 US 226, 41 L ed 979; 17 S Ct 581.

5. PERJURY by the State's only witness, Patrolman Medley, who acted in the name of the State when he arrested and represents the State in the prosecution of the charges and therefore is AN AGENT OF THE STATE, and his fabrication of the events on which the Appellant was charged and convicted constitutes an act of the state based on perjury without which conviction could not have been obtained.

Due process was held to be violated where *false testimony affecting the issue whether a defendant's confession was voluntary or not was given by the same police officer who was in charge of the investigation. The Defendant was entitled to*

*coram nobis relief ALTHOUGH SUCH FALSITY WAS UNINTENTIONAL AND WAS NOT KNOWN TO THE PROSECUTION AT THE TIME OF THE TRIAL* (People v Robertson, 2 NY2d 355; 239 NY2d 673; 190 NE 2d 19). In this case the person in charge of the investigation unwittingly committed perjury which was unknown to the prosecution at the time of trial and was done unwittingly by the officer. If the unwitting perjury gives relief, then an officer's knowing perjury should.

Conviction by perjured testimony on the part of the prosecuting officers is violation of due process. Casebeer v Hudspeth C C A Kans, 121, F2d 911, 914, 915.

The Court held that NO CLEARER AVERMENT OF THE KNOWLEDGE ON THE STATE'S PART COULD BE MADE that perjured testimony had been used COULD BE MADE than the allegation of perjury on the part of the POLICE as the basis of the knowing use of perjury (Strosnider v Warden of Maryland Penitentiary 228 MD 663, 180 A2d 854). It was not necessary for the prosecution to know in advance. The State police act in the name of the State. On the basis of perjury alone where there is only one prosecuting witness, it is not necessary that the Prosecuting Attorney know, for the Patrolman acts in the name of the State, therefore, Medley's perjury is known to the State.

In People v Lewis 2 Ill2d 328, 118 NE2d 259, where the violation of the due process was perjury not known to the prosecution but the result of the one perjuring witness was to deny due process in proceedings on criminal charges, i.e. violation of constitutional rights.

6. KNOWING USE OF A PERJURER and perjured testimony to obtain the conviction of the Appellant by the State in the Prosecuting Attorney Donald Dalton in both trials. The Appellant does not concede that the State did not know of the perjury prior to the first trial in 31109 in June, 1961.

Where evidence of testimony known to the Prosecuting Attorney to be perjured at the trial is used to convict, it is violation of due process. People v Sadness 300 NY 69; 89 NE2d 199. People v Smith 202 Misc 694, 108 NY2d 703.

A conviction secured by perjured testimony known to be such by the prosecuting attorney IS DENIAL OF DUE PROC-

ESS under the 14th Amendment. White v Ragan, Ill 65 S Ct 978, 980; 324 US 760, 89 L ed 1348.

7. SUPPRESSION OF, DESTRUCTION OF, and withholding BY THE STATE of information or evidence favorable to the Defendant.

Due process includes EVERY STEP FROM SUMMONS to judgment and if a party is deprived OF ANY RIGHT USUALLY ACCORDED TO OTHERS, it is not due process of law. Ringlander v State, 90 NYS 772, 776; 98 App Div 101.

"Due process contemplates trial in a criminal case by a fair jury WITH FULL EVIDENCE. . . ." FSA Para. 918.10; Henderson v State 20 SO2d 649, 651; 155 Fla 487.

Suppression of evidence by police constituting denial of due process of law. Curtis v Rives 123 F2d 936, 939; 75 US App DC 66.

Due process of law prevents fundamental unfairness in the use of evidence whether it is true or false (Blackburn v Alabama, 361 US 199; 4 Led 1488, 78 S Ct 1163)—this refers to use in court, but suppression of evidence out of court is also a fundamental unfairness in the use of the evidence in the hands of the prosecution or other officers acting in the name of the State.

US v Boldi, 195 F2d 815; US v Dye, 221 F2d 763; US v Meonly, 294 US 103—where the State suppressed favorable evidence and deliberately presented harmful evidence known to be false.

8. Illegal entrapment on the highway and violation of the Appellant's right to move on the highway unmolested. Harassment by the State Patrol unlawfully on prior nights when the Appellant was campaigning in the Congressional primaries within sixty days of this event.

Personal liberty consists largely of the right of freedom to travel (Kent v Dulles 357 US 886; 6 Led2d 1204, 78 S Ct 1113). One may therefore under normal conditions travel at his inclination on the highways while conducting himself in an orderly and decent manner neither interfering with or disturbing another's rights. HE WILL BE PROTECTED, NOT ONLY IN HIS PERSON, BUT IN HIS SAFE CONDUCT. Pinkerton v Verberg 78 Mich 573, 44 NW 579.

Liberty includes the right of self defense against violence. State v Mo. Tie and Timber 181 Mo. 536; 80 SW 933.

The police powers of the State is subject to applicable provisions of Federal and State Constitutions designed to protect private rights. Eccles v Stone, 134 Fla 113.

The Bill of Rights declares rights that exist without governmental grant and may not be taken away *AND THAT THE GOVERNMENT HAS THE DUTY TO PROTECT*. Quinn v Buchanon, Missouri 298 SW2d 413.

9. False arrest and incarceration that is for violation of laws, said violations never occurring.

Life, liberty and property include right of self defense and exemption from arbitrary arrest. State v Loomis 115 Mo 307, 22 SW 350.

10. Attempt by the State Highway Patrolman to force the Appellant to sign a summons on which neither the charge nor the place of the occurrence of the alleged offense was written. Refusal to identify where the alleged offense occurred and where the Appellant was and when arrested so that the Appellant could know the facts concerning the arrest. It was not until two weeks after his arrest that the Appellant knew that he was accused of speeding west of the Evans Motel, or that he was charged with passing a tractor trailer freight truck. Neither ever occurred.

The State is bound to exercise even in the exercise of its police power, the right of all persons to security afforded by due process of law. State v Martin 193 Ind 120; 139 NE 282; 26 ALR 279.

Due process includes every step from summons to judgment and if a party is deprived OF ANY RIGHT USUALLY ACCORDED TO OTHERS, it is not due process of law. Ringlander v State 90 NYS 772, 776; 98 Div App 101.

Courts' or officers' failure to exercise known duties constitutes denial of due process of law. Robinson v Johnston D C Cal 50 F Supp 774, 776.

11. Attempt by Patrolman Medley and the second officer (in

powder blue uniform similar to a State Patrolman yet unidentified) to prevent the Appellant from making bail.

12. Minor assault upon the Appellant by the second officer in powder blue uniform who remains unidentified.

13. Failure of the Prosecuting Attorney and the Attorney General Eagleton, counsel to the State Highway Patrol, to investigate the charges of the Appellant that criminal activity had surrounded his entrapment and arrest.

> The due process and equal protection law may be violated by the UNFAIRNESS of officers of the State. Annotations 98 ALR 411.
>
> Equal protection of the laws means that the right of all persons must rest on THE SAME RULE UNDER THE SAME CIRCUMSTANCES. Anderson v St. Paul 226 Minn 186.
>
> The 14th Amendment extends to all action of the State denying equal protection of the laws whatever the agency of the State taking the action or whatever the guise in which it is taken. Cook v Davis C A 5 Ga 178 F2d 595.
>
> Depriving of due process or full protection of the law extends to all ACTS of the State whether through legislative, its executive, or its judicial authorities. Scott v Neal 154 US 34; 38 Led 896; 14 S Ct 1108.
>
> Arbitrary discrimination between persons in similar circumstances is denial of due process. USCA Constitutional Amend. 5; Wallace v McCurrin CCANA 95 F2d 856.

14. The Appellant never received from the state a copy of his summons or arrest report or information.

Due process includes every step from summons to judgment and if a party is deprived of ANY RIGHT USUALLY ACCORDED TO OTHERS, IT IS NOT DUE PROCESS. It is unheard of in Missouri that a man receives nothing whatever to show why and where he has been arrested and does not know what he has been forced to sign and to make bail because he cannot see without his glasses which had been taken away by the officers and does not know until two weeks after his arrest that he has been charged with speeding on a part of the highway where he was, in fact, not exceeding the speed limit.

Due process of law is exercise of the powers of government as the settled maxims of the law permit and sanction under such safeguards for the protection of the individual as those maxims prescribe for the cases to the one in question belongs. Jones v Commonwealth 108 SW2d 816, 819; 269 Ky 779; Ringlander v State (Supra).

15. Denial of privilege to take polygraphs. *To avoid litigation* and to expose criminality surrounding arrest, Appellant and his wife made such an offer to the State within 72 hours of the event.

Due process of law implies at least a conformity with the natural and inherent principles of justice. Holden v Hardy 18 S Ct 383, 169 US 366.

16. Failure of the Officer of the State Patrol to investigate the complaints of the Appellant, failure to make a correct report, failure to include the evidence suggesting criminality surrounding the arrest, failure to make essential corrections (as will be set out below) so that the investigating officer is alleged to be a party to conspiracy against the Appellant.

He who acts in the name of the State and for the State and is clothed with the power of the State, HIS ACT IS THAT OF THE STATE. Home Tel & Tel v Los Angeles 227 US 278, 33 S Ct 312.

Suppression veri as a false pretense as withholding the truth when it should be uttered. Turhey v Avery 113 A 710; 92 NJ Eq 473.

An act is done corruptedly when it is done with intent to obtain some improper advantage inconsistent with the official duties and rights of others.

When the conduct of parties indicates that they are acting together with a common and corrupt purpose in view the jury may be permitted to infer that conspiracy exists. Commonwealth v Albert 30 A2d 184, 185; 151 Penna Supr 184.

17. Duress minas on the highway thought to be by Trooper Medley, who, by his own words to the Petitioner and his wife, admitted he was the car tailgaiting the Appellant during the first part of passing of the cattle truck.

Duress consists of forcing a person to act against his will. Aliola v City of Summit 97 A 722; 89 NJL 154.

Any coercion of another causing him to act contrary to his own free will or to submit TO A SITUATION OR CONDITIONS AGAINST HIS VOLITION OR INTERESTS constitutes DURESS. Hailey v Fenner & Beane, Texas 246 SW 410.

Duress in its broader sense includes every mental condition caused by fear of personal injury, or injury to one's wife or child, or husband which is sufficient to make the person acted upon incapable of exercising his free will power. The important consideration being whether the means used were under the circumstances sufficient to prevent free exercise of the will power. Price v Bank of Fayette, 128 NW 898, 897; 144 Wis 190.

18. Conviction of committing two different misdemeanors at two different places at the *same time* by the same prosecuting attorney using the same State Patrolman as prosecuting witness in 31109 and 31495. Attempt to convict the Appellant on his own testimony and at the same time overthrowing it to convict on the totally contradictory charge in the same trial 31109.

19. Conviction by having the Appellant commit two entirely different and irreconcilable acts ON EXACTLY THE SAME STRETCH OF HIGHWAY AT THE VERY SAME TIME, the two actions not being able to stand together on the same highway as a physical fact. These acts arose by testimony in 31109 and 31495, same prosecuting witness and same prosecuting attorney.

20. Charged and convicted of pulling out on a double yellow line and passing a tractor trailer freight truck which never existed.

21. Charged and convicted of speeding 80 miles per hour and of being pursued at this speed on the very spot on the highway where the Appellant was seated in the Highway Patrol car not moving or having his hand on the wheel.

22. Invasion of the Appellant's constitutional rights under the Fifth Amendment, USA Constitution, and the Fourteenth

Amendment, forcing to testify against his will to information not mentioned in his examination in chief in Cause 31495 with intent to convict the Appellant solely on his own testimony. The full import of this does not lie here alone, but in the FACT THAT THE INFORMATION FORCED FROM THE APPELLANT OVER REPEATED OBJECTION OF COUNSEL WAS THE TESTIMONY WHICH THE STATE HAD OVERTHROWN IN ITS ENTIRETY in Cause 31109.

This was part of a conspiracy. CONSPIRACY, an agreement for a purpose of wrongfully prejudicing another or to PERVERT PUBLIC JUSTICE. Grinder v Walker, 48 Tenn (1 Heisk) 186, 160.

Procedural due process contemplates the rudimentary requirements of fair play. Vernon v State 245 Ala 633, 18 SO2d 388.

There is right for the individual to be protected from self-incrimination and is violative of due process in the 14th Amendment where the rights of the citizen are secured against the State itself where the acts of the State are violative of rights secured by the Constitution. Owensburg Water Works v Owensboro, 200 US 38; Led2d 361; 26 S Ct 249.

The 14th Amendment prevents fundamental unfairness in the use of testimony whether true or false. Blackburn v Alabama 361 US 199; 2 Led2d 242.

Denial of due process as applied to criminal trial is the failure to observe fundamental fairness essential to the very concept of justice.

USCA Constitutional Amendment 14, Conviction in a State Court for violation of State Law based in whole OR IN PART UPON INVOLUNTARY CONFESSION constitutes denial of due process of law guaranteed by the 14th Amendment. The State's forcing the Appellant to relate under oath in Cause 31495 the testimony used in his defense WHICH THE STATE HAD TOTALLY OVER-THROWN IN PRIOR TRIAL, TO HELP CONVICT ON A SECOND CHARGE IS A FORM OF INVOLUNTARY CONFESSION. BUT THE APPELLANT CONFESSING THE TRUTH AND BY THE STATE AC-

CEPTING IT, THE STATE IMPEACHED ITS PRIOR CONVICTION IN 31109.

23. ALTERATION OF THE TRANSCRIPT IN EACH OF THE TWO TRIALS AND IN ONE HEARING ON MOTION TO QUASH ON VIOLATION OF DUE PROCESS, such alteration having been made in each case WITH CRIMINAL INTENT. Alteration in the fourth cause with intent to cover information relating to conspiracy. *In spite of evidence and witnesses, the Appellant has been unable to get a hearing.* The allegations are known to every branch of the State of Missouri: Executive, legislative, judicial and ministerial; State Patrol and Prosecuting Attorney.

Felony, corruption, fraud, criminal intent, deprivation, collusion, conspiracy, withholding of full protection of the law, violation of due process, malfeasance and misfeasance in office at prosecuting, executive, ministerial and judicial levels, all exist in this one charge infecting all procedures with fatal irregularity.

24. Defamation, slander and libel of the Appellant in the Court records. The defamation and slander of the Appellant ran from one political campaign in the Congressional primary, 1960, through the next two campaigns damaging the patient's public and community reputation and casting a grave and depressing shadow upon his integrity.

Withholding the full protection of the law while campaigning and in this attack upon the integrity of the Appellant has deprived him of those things to which he had a natural right and a lawful right. In those rights the State had the duty to protect him. The Appellant was slandered both in his personal and public reputation.

> The right of liberty guaranteed by the Constitution includes the right to exist and the right to enjoy while existing and is invaded by deprivation of those things which are necessary to the enjoyment of life according to the nature of temperament and lawful desires of the individual. Pavesich v New England Mut L Ins, 122 Ga 190, 50 SE 68.

The enjoyment of private reputation unassailed is a right entitled to the full protection of the laws and of the Constitution such AS ARE THE RIGHTS TO POSSESSION OF LIFE, LIBERTY OR PROPERTY. Harris v Nashville Trust 128 Tenn 573; 162 SW 584 T.

Life, liberty and property include the right to all our liberties —personal, civil and political. In short, all that makes life worth living. Re Flukes 157; Missouri 125; 57 SW 545.

25. Alteration of the information sheets filed charging the Appellant in Cause 31109 and 31495 changing names, dates and time of setting of trial.

26. Conspiracy within and without the Courts of the State of Missouri with intent to deprive the Appellant of Due Process of Law and/or full and/or equal protection of the laws violating the State and Federal Constitutional guarantees. THE ALTERATION OF THE TRIAL TRANSCRIPTS WITH CRIMINAL INTENT IS THE OVERT ACT WHICH TIES THE WHOLE CONSPIRACY TOGETHER.

The words in the USCA construction of the Fourteenth Amendment providing that no state shall deprive any person of life, liberty or property without due process of law includes its officers, ITS COURTS AND ALL OTHER GOVERNMENTAL AGENCIES. All these are included in the prohibitions. Ex parte Powers 129 F 985, 988.

Conspiracy is of two kinds: one, INSULT TO PUBLIC JUSTICE; two, against individuals such as to have a *tendency to injure them in their REPUTATIONS* or their property. Clinton v Estes 20 Ark 216, 224.

It is not necessary for two persons or more to MEET together to constitute conspiracy (or enter into an explicit or formal agreement). IT IS SUFFICIENT if two or more persons IN ANY MANNER or through any contrivance positively or TACITLY come to a mutual understanding to accomplish a common and unlawful purpose. US v Babcock 3 D Ill 581, 585 FED CAS No 1-14, 487.

No formal agreement to do an act charged is necessary; sufficient to show that the MINDS OF THE PARTIES MEET UNDERSTANDINGLY. Soloman v State 76 SW 351, 354; 168 Tenn 180.

MO St Ann No. 4243, Page 2963 provides that if two or more persons agree to conspire or to commit any offense, or to falsely or maliciously INDICT another or procure another's arrest, or FALSELY AND MALICIOUSLY MOVE OR MAINTAIN ANY SUIT to cheat or TO DEFRAUD another by criminal means, or TO OBSTRUCT JUSTICE OR THE ADMINISTRATION of the laws shall be guilty of a misdemeanor.

MO St Ann 4244, Second Section 2153, Page 2964—no agreement to commit conspiracy unless SOME ACT BE DONE to affect the object admitting prior definition of common law but requiring an OVERT ACT. Missouri—State v Dalton 114 SW 1132, 1140. 134 Mo App 517.

An INFERENCE of conspiracy and COMMON INTENT to defraud can be drawn where IN THE END THERE IS A COMPLETE STRUCTURE OF FRAUDULENT RESULT in the end frame of which has been the furnished PIECE BY PIECE by several parties and parts of which when brought together show an adaptation to each other and THE END ACCOMPLISHED. Jewell v Jewell 9 NW2d 513, 516. 215 Minn 190.

CONSPIRACY OF PROSECUTING OFFICERS. Casebeer v Hudspeth CCA Kans 121 F2d 914, 915.

27. Denial of assistance of state officers and refusal to come forth with the powers of their offices thereby denying the Appellant the power to attack the criminality surrounding his arrest and convictions thereby discrediting him in his attack upon the criminality within the Department of Revenue and the Treasury of the State of Missouri, and the criminal acts corrupting the Courts of Missouri.

The State is bound to recognize even in the exercise of its police power, the right of all persons to security afforded by due process of law.

Due process includes every step from summons to judgment and if a party is deprived of right USUALLY ACCORDED TO OTHERS, it is not due process of law. Ringlander v State 90. NYS 772, 776; 98 App Div 101.

The guarantee may be violated by UNFAIRNESS or corruption of officers. Annotations 98 ALR 411.

Due process is denied when any person is singled out for the impositions of restraints or burdens not imposed or to be

borne by others by all of the class or community at large. State v Ashbrook 55 SW 627, 632; 154 MO 375. Missouri State v Loomis 22 SW 350, 351; 115 Missouri 307.

Failure to observe fundamental fairness essential to justice is violation of due process of law. United States ex rel Innes v Hiatt CCAPa 141 F2d 914, 915.

Courts or officers failure to exercise known duty constitutes denial of due process of law. Robinson v Johnston DC Cal 50 F Supp 774, 776.

28. Action in the Warren County Circuit Court in collusion and conspiracy in the Motion to Dismiss in order to destroy the Petition for a Writ of Coram Nobis and make the facts RES ADJUDICATA, such facts relating to conspiracy against the Appellant and criminality within the courts and treasury of the State of Missouri. These actions infected the Cause 31495, 32149 and additional action under 925 with fatal errors at law in addition to being fraudulent in intent to deprive the Appellant of due process.

See under No. 30 infra.

29. Unlawful proceedings in the Warren County Circuit Court when the Judge Adams and Prosecuting Attorney Dalton knew they had no jurisdiction and no cause to bring the Appellant into the Court for action in Cause 925, thereby making the proceedings void in 925 and 32149.

30. Refusal of Judge Adams and Prosecuting Attorney Dalton to recognize the rights of the Appellant acting as Attorney Pro se to subpoena them as material witnesses for the defense; refusal to disqualify themselves because they could not act in a cause in which they had been subpoenaed as witnesses for the defense; and when they had been accused in the petition for the writ of coram nobis to have been parties to conspiracy against the Appellant and guilty of fraud and corruption in the courts. Further, when subpoenaed and called, both refused the call of the Appellant as attorney Pro Se TO BE SWORN and refused to answer reasonable and proper questions directed to them relating solely to the procedure in the court,

thereby the entire proceedings are voided. The cause was held to be 925, charged to Cause 32149 which was a motion to Quash execution on basis of violating due process of law.

> No judgment in court is due process of law if rendered without jurisdiction in court. Swal v Banes 35 P 2d 704, 715; 168 Okla 550.
>
> In view of the allegations in the petition for writ of coram nobis alleging disqualification of the judge, the hearing on the petition should be held before another judge. People v Ambrose 8 App Div2d 683; 184 NY2d 383.
>
> The hearing on a petition in the nature of a writ of error coram nobis should be held before a judge who will not be required to testify as a material witness in the proceedings. United States v Valentino (CA2NY) 283 F2d 634.
>
> Where the petitioner alleges facts which if established would justify coram nobis relief, then he is entitled to trial thereof in open court unless his claims are conclusively refuted BY UNQUESTIONABLE DOCUMENTARY PROOF. People v Picioti 4 NY2d 340; 175 NYS2d 32; 151 NE2d 191.
>
> 161 ALR 540, whether a party is entitled to a change of judges.

31. Errors at law improperly taken and adjucated against the Appellant.

32. Insufficiency of contradictory and conflicting testimony used to convict on the part of the State which should not justify the conviction.

33. Newly discovered evidence at the very last proceeding in the fourth year after arrest and two years after last trial which bore upon the merits, impeached the STATE'S CASE (not just witness) on facts known to the prosecution which should have been available to the juries.

34. The State alleged and the Appellate Court sustained the charge that the Appellant had not used due diligence. The Appellant HAD HAZARDED HIS PERSON which is not a requirement of due diligence on trying to "break" this. The State itself withheld some powers which should have been used to provide full protection for the Appellant. This help

was knowingly withheld by the Prosecution who accused the Appellant of failing to use diligence, and accused the Appellant of trying to obstruct justice.

> To constitute due diligence does not require UNUSUAL EFFORT or expenditures, but only such consistency and constancy in pursuit of undertaking as is usual with those in like enterprises. Highland Ditch v Mumford 5 Colo 325, 326.
>
> DUE CARE—Due Diligence—ORDINARY CARE are convertible terms and mean same thing. Western Union Tel Co v Smith, Tex 133 SW 1062, 1064.
>
> Reasonable diligence is such diligence as a prudent man would use in exercise in conduct of own affairs. Barlow v Cooper 109 Ill App 375.
>
> Due Diligence means doing EVERYTHING REASONABLE, NOT EVERYTHING POSSIBLE. State v Scott 34 SO 479, 491. 100 La 369.

35. There were facts going to the merits of the issues which should have led to directed verdicts for the Appellants.

36. Some defense attorneys committed statutory or constructive fraud in the conduct of the defense of the Appellant and/or acted in collusion and/or in conspiracy with the prosecution in such a manner as to make a mockery of justice.

> Ordinarily misconduct of counsel is not reason for rehearing in the writ since it cannot be attributed to the action of the State and does not constitute a denial of due process (People v Hernandez 8 NY2d 345, 207 NY2d 668). However where assistance of counsel was such as to shock the conscience of the court and make the trial a farce or mockery of justice, relief may be given. People v Brown 7 NY2d 359; 197 NYS2d 705; 165 NE2d 557.
>
> It is only when the ineptitudes are so extensive to indicate that the entire proceedings were a mockery of justice and a sham resulting in denial of due process that coram nobis will be warranted. People v Codarre 206 Misc 950; 138 NYS2d 18.
>
> Where assistance of counsel was such as to shock the conscience of the court and make the trial a farce and mockery of justice coram nobis relief is available. Hillman v State 234 Ind 27; 123 NE2d 180.

37. Collusion on the part of the State and the courts as well as with some defense attorneys.

38. Obstruction of justice by the State.

> Due course of justice—the rule making obstruction of justice thereof an offense means not only due conviction and punishment, OR DUE ACQUITTAL AND DISCHARGE THEREOF AS JUSTICE MAY REQUIRE, but also DUE COURSE OF PROCEEDINGS in the administration of justice. Shackford v Commonwealth 214 SW 788; 185 Ky 51.

39. Failure to exercise fundamental fairness in regard to evidence passing through the hands of the Prosecuting Attorney, Attorney General and other judicial, executive and administrative officers of the State.

> Due process of law implies at least a conformity with the natural and inherent principles of justice. Holden v Hardy 18 S Ct 383; 169 US 366.
>
> Coram nobis may be brought to show default in the ministerial officers of the state. Russ v State Fla 95 SO 594.
>
> As applied to criminal trial, due process is a failure to observe that fundamental FAIRNESS essential to the VERY CONCEPT OF JUSTICE and in order to declare a denial it must be shown that the absence of that fairness fatally infected the trial. State v Hass S.D. 8 NW2d 569, 570.

40. Transfer of Cause 32149 out of the Magistrate Court by the Prosecuting Attorney without the knowledge or consent of the Appellant or his counsel into the St. Charles Circuit Court where known bias existed and in which criminal alteration of the trial transcript had occurred.

41. Failure of the Prosecuting Attorney to furnish copies of the information to the Clerk of the Magistrate Court so that Subpoenaes of vital evidence could be secured by the Defense at a time when the State knew the evidence would be destroyed and when the State knew the defense was unable to get the information in Magistrate Court in order to prepare the defense.

> Action conformable to fundamental rules of right and affect-

ing all persons alike constitutes due process. Winter v Barrett 186 NE 113, 114; 352 Ill 441, ALR 1398.

Due process includes administrative process of CUSTOMARY SORT as well as judicial process. Musser v Adair 45 NE 903, 906; 55 Ohio St 466.

42. Removal from Court of defense exhibits C and C1 in the Warren County Circuit Court in Cause 32149 by the Prosecuting Attorney when instructed by the Court to deposit them with the Clerk leaving no receipt to determine their whereabouts. When the Appellant acting Pro Se sought out the exhibits, the Prosecuting Attorney admitted he had them and had forwarded them to St. Louis Court of Appeals after receiving the registered letter of the Appellant thereby placing them in adverse Court where the Appellant has reason to fear to approach in person. This Court being 55 miles farther east of the home of the Appellant and thereby requires two hours additional driving for the Appellant to review these Defense Exhibits. The State had introduced these exhibits to further the conviction of the Appellant. They show knowledge in the possession of the State requiring basic fairness in use.

Musser v Adair cited in allegation 41 supra.

43. Attempt by Circuit Judge to subvert one attorney for the defense. This is fraudulent and in course of these cases conspiratorial.

44. Misconduct on the part of the State and officers acting in the name of the State administrative, ministerial, prosecuting, executive and judicial branches of the government. They failed to preserve or attempt to preserve or to investigate the availability of the radio tapes which were of vital importance to help prove Trooper Medley was acting under orders. This failure to preserve involved the head of the Highway Patrol, Col. Waggoner, the then Governor Dalton, the then Attorney General Eagleton, the then Prosecuting Attorney Dalton after he heard the Appellant swear in Magistrate Court that the Trooper called for high ranking officers of the Highway Patrol at 1:00 A.M. The failure of the Circuit, Appeals and Supreme

Courts' justices to initiate a hearing to determine whether Appellant was or was not the victim of criminality within the Courts themselves.

> Due process of law may be said to be satisfied whenever opportunity is afforded to invoke the EQUAL PROTECTION OF THE LAWS by judicial proceedings appropriate for the purpose and ADEQUATE TO SECURE THE END AND OBJECT TO BE SOUGHT AND ATTAINED. Reed v Reed 98 NW 73, 76; 70 Neb. 775.
>
> Due process of law is not confined to judicial proceedings, but extends to EVERY CASE which may deprive a citizen of life, liberty or property whether the proceedings be judicial, administrative or executive in their nature. Spencer v Merchant 8 S Ct 921; 125 US 345; 31 L Ed 763.

45. Failure of the State when subpoenaed in Cause 32149 and 31928 to produce Trooper Medley's original report which had been hand written. This report has never been produced. Failure to produce the original from the State's own files of the Medley typewritten report in 32149. Removal from the files of the St. Charles Circuit Court records of 32198 of the typed copy of the original State Medley report at orders of the State Highway Patrol leaving only a receipt to show that IT WAS JUST A COPY FILED in the St. Charles Circuit in the first place. This receipt was required by the Clerk to protect the validity of the files. This failure to produce records constitutes misconduct on the part of the State. It shows that basic fairness was absent at all levels violating the due process and evidence suppressed.

46. Failure of Attorney General Eagleton, he being counsel for the State Patrol, to answer through his clerk and to produce files and correspondence when subpoenaed duces tecum by the St. Charles Circuit Court in the hearing to Quash Execution 31928 on basis of violation of due process of law. The Attorney General also had in his possession the request of the Appellant with sworn statements for investigation bearing on the removal of the Prosecuting Attorney from his office for criminal misconduct in the knowing deception of the Petit jury in the

Warren County Circuit Court which can be absolutely established. This is one among collusion, conspiracy, misconduct on the part of the State, withholding of the equal protection of the law, failure to exercise known duties of office.

47. Attempt at intimidation of the Appellant through legal threat of the Brookshire case by Judge Ruddy of the St. Louis Court of Appeals (see infra).

48. Attempt to intimidate the Appellant and threat of the use of physical violence against the Appellant without cause or provocation by Presiding Judge Wolfe of the St. Louis Court of Appeals because the Appellant tried to file a copy of the Petition for Writ of Coram Nobis in the St. Louis Court of Appeals where lies the jurisdiction in Cause 32149 (see infra).

49. That the Circuit Court judges, the judges of the St. Louis Court of Appeals, and the Judges of the Supreme Court of the State of Missouri have failed to act and exercise a reasonable and proper judicial discretion to protect the interests of the Appellant within the courts of the State and to protect the integrity of the Courts themselves during that period of time in which Causes 31109, 31928; 31495, 32149 were within the Appellate Courts of Missouri and within the Circuit Courts, 1961-1965 (citation infra).

50. That prejudice and bias are clearly shown throughout the judicial system of Missouri in regard to the equity of the Appellant's cases at law.

51. That the trial, hearings and appeals have been rendered void in their decisions by the refusal of the Courts themselves to come to grips with the criminality surrounding these cases within the judicial system and a sham and mockery has been made of justice itself by the courts themselves (infra).

52. The appellant has repeatedly been denied access to grand juries so that he might attack the criminality within the courts and initiate actions to establish his complete integrity so that he might attack the criminality which has occurred within the Treasury of the State of Missouri as well as its courts.

Citations for the above allegations 47, 48, 49, 50, 51 and 52, as follows:

Due process implies the right to be heard and to have the right of controverting EVERY MATERIAL FACT WHICH BEARS ON THE QUESTION OF RIGHT IN THE MATTER. Wilbur v Reed 122 NW 53, 55; 84 Nebraska 767.

Due process restricts arbitrary executive or judicial action to secure full and equal protection of the laws. State v Ashbrook 55 SW 627, 632; 154 Missouri 375.

The 14th Amendment prohibits the unequal enforcement of valid laws as well as any enforcement of invalid laws. East Coast Lumber v Babylon (CA2d NY) 174 F2d 106.

It seems clear that a violation of the due process clause may be committed by the judiciary of the State in construing a State Statute but the Federal Supreme Court cannot interfere unless the judgment amounts to mere arbitrary or capricious exercise of power or is in clear conflict with those fundamental principles of jurisprudence which have been established in our systems of law for the protection and enforcement of private rights. Corrigan v Buckley 271 US 323; 46 S Ct 521. West v Louisiana 194 US 258; 48 L Ed 956; 24 S Ct 650.

It is immaterial whether the STATE has acted SOLELY IN VIOLATION THROUGH ITS JUDICIAL BRANCH. NAACP v Alabama 357 US 449; 78 S Ct 1163.

Due process is secured only if the laws act on all alike. Duncan v State of Missouri 14 S Ct 570, 571; 152 US 377, 382.

53. There was competent and relevant evidence known to the defense counsel and to the Court in Case 31109 and within open court the Judge decided in the presence of the jury that the evidence would not be given to the jury without the jury knowing what the evidence was and without the Appellant knowing the relevance of the information as it now bears on collusion, conspiracy and corruption. This was eliminated from the altered transcript in Cause 31109.

54. Trooper Medley, the prosecuting witness, may be inferred from his call to the Kirkwood Patrol Headquarters to have been under order in the arrest of the Appellant. He was seen taking directions in answering questions when under oath on the witness stand during trial in 31495 by the motions of

the head of a Sergeant of the Highway Patrol seated in the audience at the trial. Further, Medley himself, may be under duress and afraid to tell the truth.

> The gravamen of duress is a coercion of the full will by physical OR MENTAL RESTRAINT so that the victim does not act as a free mortal agent in respect to matters at stake. Cox v Edwards 139 NW 1070, 1072; 120 Minn 512.
>
> Duress forces a party to do something not without knowledge of illegal element but fully conscious thereof. Security Savings v Kellems 273 SW 112, 114, Missouri.

55. EXTRINSIC FACTORS OF threats indirect; warning direct of danger to the Appellant; intimidation of the Appellant; terrorization of his children and wife; and the possible nearness of death to those involved in the conspiracy and to the Appellant can be properly alleged to have been a reality in these cases.

56. Extrinsic factor of political powers and adverse power to the Appellant which entered the causes prior to and after arrest through the unlawful use of the police power of the State which raises the question of the free exercise of one's right to run for high political office in the primaries without harassment, before arrest and leading to the withholding of the full protection of the law after arrest.

57. That the full reality of the power directed against the Appellant is revealed by the fact that someone was able to get to one of the tapes taken from the official Edisonphone records of the Court Reporter made in the trial in Cause 31109 and to erase the entire trial from the tapes. How, when, and where and by whom, this was done remains unknown.

58. In Cause 31109 the State of Missouri convicted the Appellant by overthrowing the testimony of the Appellant and his wife IN ITS ENTIRETY in no less than eighty of their sworn statements bearing on the events surrounding the arrest of Appellant. The State convicted on the testimony of Trooper Medley in front of the jury. The Appellant's testimony is so ABSOLUTE in contradiction of the State's case that it is im-

possible to say that the Appellant and the Trooper were talking AT ANY TIME ABOUT THE SAME EVENTS. The jury believed the Trooper and convicted, in Cause 31109, the passing charge. In spite of this, the State as the Prosecuting Attorney, in collusion with the Trooper, who was guilty of suppression veri, and both guilty of conspiracy, forced the Appellant to repeat his testimony before a different petit jury in Cause 31495 USING THE DEFENDANT'S TESTIMONY NOT IN CHIEF INCLUDING THAT WHICH THE APPELLANT TRIED NOT TO REVEAL to help obtain the conviction in the speeding charge. This testimony forced from the Appellant and allowed to be used as factual by the State to help convict the Appellant in the speeding charge was exactly the same testimony of the defense WHICH THE STATE HAD OVERTHROWN IN ITS ENTIRETY in the passing charge 31109. The State, therefore, IMPEACHED IN ITS ENTIRETY ITS OWN TESTIMONY ON WHICH IT CONVICTED IN 31109. Later, after the trial but in the hearing for Motion to Quash, the State put its former testimony from Cause 31109 back into the records of Cause 31495 thereby IMPEACHING THE STATE'S CASE in 31495 and 32149. Both convictions are therefore null and void and must fall in toto.

Due process of law means legal proceedings according to those principles which have been established in our system of jurisprudence for protection and enforcement of private rights. Ryans Furniture v McClair 120 Fla 109.

The Bill of Rights declares right that exists without governmental grant and may not be taken away AND *THAT THE GOVERNMENT HAS THE DUTY TO PROTECT*. Quinn v Buchanon. Missouri 298 SW2d 413.

DUE PROCESS of law is a summarized constitutional guarantee of respect for those personal immunities which are so rooted in the traditions and conscience of the people as to be ranked as fundamental. They are implicit in the concept of ordered liberty (Ronchin v California). The Petitioner knows this case but cannot find citation.

Where the State has conferred power in some of its agencies to perform a certain function involving exercise of DISCRE-

TION, the performance of such function within the grant although in a manner to RENDER IT OBNOXIOUS TO THE LAWS OF THE STATE IS NONE THE LESS THE ACT OF THE STATE within the contemplation of constitutional provision of deprivation of life, liberty, or property without due process of law. HE ACTS FOR THE STATE. HIS ACT IS THEREFORE THE ACT OF THE STATE. San Francisco L & P v County of San Francisco 189 F 943, 949.

Virginia v Rives (regarding jury selection, but the principles hold), 100 US 313, 318. Whoever by virtue of his public position under a state government deprives another without due process OR TAKES AWAY THE EQUAL PROTECTION of the laws violates constitutional inhibitions since he acts in the NAME OF THE STATE, for the State, is CLOTHED in the power of the State. HIS ACT is therefore the ACT OF THE STATE.

## Reasons for Granting the Writ

The reasons the Appellant has held on and fought these cases are now apparent. They were never traffic cases in the normal sense of the word. It fell to the lot of the Appellant to defend the public interest whether he willed or not. The Appellant had the responsibility as a citizen to protect the integrity of the courts of the State of Missouri and has fought and is fighting to do so.

> It is just as obligatory upon the citizen to resist encroachment upon his rights and liberties guaranteed by the Constitution as it is for him to uphold and maintain its integrity. Rio Grande Lumber Co. v Darke 50 Utah 114; 167 P 241.

The principles violated in these causes must be protected. In recent years there have been many petitions which related to other fields of violation of the Fourteenth Amendment. This petition calls the Court to recognize that the price of liberty, life, and property under the Fourteenth Amendment is eternal vigilance in all fields. These allegations show that basic rights of the people (which they felt were secure from even the hint of the events which happened in Europe in the recent past) can be degenerated, and fair aspect of the law sullied, if those whose responsibility it is to protect, fail in their duties.

The overtones in these cases of political power . . . harassing an individual because he dared to exercise his constitutional right to stand in the primaries for congressman; and that this power can be inferred to have entered and corrupted the courts of the state, causing them to use improper and unreasonable discretion and fail to review . . . raises the spectre of that lust for power which by destroying judicial integrity in other countries was the clear warning of the loss of national integrity to follow.

The Petitioner has fought believing that the state exists for the people, not the people for the state, and if there is no redress in these cases can anyone truthfully say that the police state is not here and now?

In the Motion to amend the transcript in Cause 31109, May 1962, the Petitioner swore that he was fighting to defend the integrity of the courts, and in defending his own rights he has defended the rights of all. The Petitioner felt he could not stand before those who believed in him and voted for him in good faith, unless he attacked the viciousness of the onslaught upon himself, and the very courts of the state.

## Conclusion

The question of violation of the due process clause of the Constitution of Missouri has been raised under Article One Section Ten in all Missouri causes. Cause 31928 was a motion to quash based on violation of the State Article above as well as the Fourteenth Amendment of the U. S. Constitution. Cause 32149 now pending is also a motion to quash in which the constitutional question was raised of violation of due process under the State Article One, Section Ten and the Federal Fourteenth Amendment. Further the proceedings have exposed such gross violation of due process; and withholding of the equal protection of the law; and unlawful procedure in court after the date the Petitioner approached the Supreme Court of the United States that in fairness to the Judges of the Supreme Court of the State of Missouri the petitioner has joined all causes as one for action forthwith.

The Petition to the Supreme Court of the United States rest clearly and exactly on the violation of the Fourteenth Amendment of the United States Constitution in those rights secured to the petitioner under the due process clause and the equal protection clause, being two separate and distinct areas of violations of the petitioner's rights.

The Judgments challenged are final judgments except in Cause 32149 in which the courts themselves have violated the rights of the petitioner and have become an adverse party to the equity of pleadings now before the court of appeals.

If the Supreme Court of Missouri does not grant relief forthwith in the Motion to Vacate Judgment in the petition in the nature of a writ of error coram nobis, the petitioner prays the Supreme Court of the United States grant the Petition for the Writ of Certiorari and order to its presence all transcripts, motions, petitions, reporters notes, sound tracks of the trials and hearings, exparte communications, granting it as a case of first impression for these cases strike at the tap root of jurisprudence and level a blow fatal to the appellate system of law.

Where the STATE is the criminal in its many branches, only the Supreme Court of the United States can be the arbiter of ALL FACETS of the pleadings and be the upholder of the private right under the Fourteenth Amendment of the Constitution of the United States.

Further the Petitioner prays to have his public reputation for integrity restored so that he may serve unfettered in other fields.

The Petitioner has met the challenge of his citizenship. He defends the public interests. He prays the Supreme Court to grant him a hearing on the merits of the allegations in a Writ of Certiorari.

Respectfully submitted,

EDWARD RUTLEDGE GISH, *Pro Se*
Callaway Bank Building
Fulton, Missouri
31 August 1965

## Appendix A

### Citations of Opinions Below

No. 1—OPINION

STATE of Missouri, (Plaintiff) Respondent

v.

Edward R. GISH, (Defendant) Appellant.

No. 31109.

St. Louis Court of Appeals.

Missouri.

Oct. 15, 1963.

Rehearing Denied Nov. 15, 1963.

Defendant was convicted in the Circuit Court, St. Charles County, James D. Clemens, J., on a charge of careless and reckless driving in violation of statute, section 304.016, subd. 4(1) RSMo 1959, V.A.M.S., and defendant appealed. The Court of Appeals, Anderson, J., held, inter alia, that testimony as to obstruction of view of oncoming traffic beyond crest of hill, as observed by witness from point at which defendant allegedly drove automobile to left side of roadway at night, constituted substantial evidence of violation of statutory prohibition against driving any vehicle to left side of roadway under specified conditions, though such observation of traffic was made during daytime from shoulder of highway and speed of oncoming automobiles observed and conditions as to weather and visibility were not shown.

Judgment affirmed.

Granville E. Collins, Fulton, and Alan G. Kimbrell, St. Louis, for appellant.

Donald E. Dalton, Pros. Atty., St. Charles, for respondent.

ANDERSON, Judge.

Defendant was tried on an information charging him with careless and reckless driving in violation of § 304.016, subd. 4 (1) RSMo 1959. He was found guilty and a fine of $50.00 was

assessed against him. From the judgment on the verdict defendant has appealed.

The information alleged that "Edward Rutledge Gish, on the 18th day of September, 1960, in the County of St. Charles, State of Missouri, did then and there wilfully and unlawfully drive and operate a motor vehicle, to wit: a 1957 Oldsmobile Sedan over and upon U. S. Highway #40, a public highway of the State of Missouri, in a careless and reckless manner, and in a manner so as to endanger the life and limb of the public, in that he did drive said motor vehicle to the left side of the roadway when approaching the crest of a grade of the highway, when his view was obstructed within such distance as to create a hazard in the event another vehicle might approach from the opposite direction, contrary to the form of the statute in such cases made and provided and against the peace and dignity of the State."

The statute involved [§ 304.016, subd. 4 (1) RSMo 1959] reads as follows:

> "4. No vehicle shall at any time be driven to the left side of the roadway under the following conditions:
> "(1) When approaching the crest of a grade or upon a curve of the highway where the driver's view is obstructed within such distance as to create a hazard in the event another vehicle might approach from the opposite direction."

Appellant's first contention is that the evidence was insufficient to support the conviction. It will, therefore, be necessary to review the evidence offered by the State in support of the charge.

Plaintiff's only witness was the arresting officer Donald J. Medley, who was an officer of the Highway Patrol. He testified that on September 18, 1960, he was on Highway 40-61 in the vicinity of the Daniel Boone Bridge, which spans the Missouri River between St. Louis County and St. Charles County. The highway runs in an east and west direction. Daniel Boone Bridge is about twenty miles east of Wentzville, Missouri. The

highway has a concrete surface approximately twenty-one feet wide.

At about 11:30 P.M., on the date in question, the witness was traveling west on the highway in a line of traffic going in that direction. Heading this line of traffic was a tractor trailer, next in line was the car of defendant Gish, then another automobile, and directly behind this other vehicle was Officer Medley. Defendant Gish was driving an Oldsmobile. Medley further testified that the alleged violation occurred on a hill immediately east of a location on the highway known as the Dardenne Flats. To the west of the crest of this hill, there is a level stretch, then a slight dip in the road, followed by another level stretch, and another dip in the road into the Dardenne Valley. According to the testimony of Officer Medley, defendant pulled out of the line of traffic and entered the left (south) lane of the highway to pass the trailer tractor near the crest of the hill. At the point where defendant turned out, there are double yellow lines painted on the highway. These yellow lines run all the way to this Dardenne Valley, or a distance of approximately 1500 feet. It took about 1000 feet for defendant to complete the pass.

Medley further testified that he and the prosecuting attorney visited the scene of the alleged violation and checked the traffic traveling from west to east. They stood on the north side of the highway, opposite the point where defendant had crossed over into the left lane of the highway at the time in question. He stated that at that point, an automobile traveling east in the first dip over the crest of the hill would not be visible; that "You lose sight of the automobile . . . for approximately six seconds." He further testified that, standing at the same place, "we lose sight of automobiles in the Dardenne Valley for approximately sixteen seconds."

On cross-examination Medley testified in effect that, the time a car would not be visible at the points in question would depend upon the speed of the car; that the test was made during daylight hours.

Medley traveled this portion of the highway about fifty times a week.

On redirect examination, Medley testified that the pavement in the two "dips" was not visible from the point of passing on the night in question.

The defendant testified that he passed the truck on a different hill, east of the hill referred to by Medley in his testimony. He further testified that if he was driving his car at the point where Medley said the pass began, he would assume he could not see a car beyond the crest of the hill because there was a yellow line there, which he saw that night.

Defendant contends there was insufficient evidence to support the conviction because the state failed to prove that defendant's view was so obstructed that his pass constituted a hazard to oncoming traffic.

The first point made under this assignment is, that the court should not, in passing on the question, consider the testimony that defendant crossed the yellow line for the reason that such testimony did not tend to show a violation of § 304.016, subd. 4(1) RSMo 1959, the section of the statute under which defendant was prosecuted. A number of reasons are advanced in the argument in support of this point which are very interesting. However, we will refrain from ruling on the point for the reason that, in our judgment, the state made a case independent of this testimony.

As heretofore stated there was testimony that subsequent to the date of his arrest, Officer Medley and the Prosecuting Attorney went to the scene of the alleged violation. While standing on the shoulder of the highway, they observed that traffic coming from the west was, at certain points, not visible over the crest of the hill where defendant crossed to the left lane, nor in the Dardenne Valley, which was over the crest of the second hill. His testimony was, that in the first dip the approaching automobile would not be visible for approximately six seconds, and not visible in the Dardenne Valley for approximately sixteen seconds. It will be remembered that the evidence further

shows that defendant remained on the left side of the highway while going over the first crest, then into the dip in the roadway, and up and over the second hill, a total distance of 1000 feet.

Defendant contends that the foregoing evidence has no evidentiary value because (1) the test took place during the daylight hours, (2) the speed of none of the cars observed was shown, (3) the condition of visibility and the weather on said occasion was not shown, and (4) the experimentors were not standing on the highway.

[1] In determining the relevancy and sufficiency of experimental evidence, the rule seems to be that substantial similarity in essential particulars is all that is required, and any such differences in conditions are for the jury in evaluating the weight to be given such evidence. Faught v. Washam, Mo., 329 S.W.2d 588, l. c. 598.

[2] We believe that the differences in the conditions at the time of the alleged violation and at the time of the experiment were not so great as to require a holding that the testimony with reference to the latter was not substantial evidence. It is true that the observations of Medley and the Prosecuting Attorney were made during the daylight hours, while the alleged violation of the statute by defendant occurred at night. We agree with respondent that the difference between day and night does not change the curvature of the surface of the earth, nor the hills thereon. The statute makes it an offense to pass where the driver's view is obstructed so as to create a hazard in the event another vehicle *might* approach from the opposite direction. It is the view of the approaching car, and not a view of the reflection of lights from an approaching car, a most deceiving phenomenon, which is the important consideration. Otherwise you would have one law for the daytime and another for the nighttime, which in our judgment, was not the legislative intent. Furthermore, there might be cars approaching without headlights, or headlights so dim there would be no reflection visible over the crest of the hill. The other dif-

ferences in conditions certainly cannot be said to be of a substantial character.

[3, 4] The testimony of Trooper Medley that, on the night in question, when he reached the point where defendant pulled into the left lane, he could not see the pavement in the first dip over the crest of the hill, though of slight probative value, was substantial evidence to be considered by the jury along with the other evidence in the case. In our opinion, the court did not err in refusing to direct a verdict of acquittal in this case.

Appellant's final contention is that a new trial should be granted on the ground of newly discovered evidence. This newly discovered evidence consists of alleged inconsistent statements contained in a deposition of plaintiff's witness, Trooper Medley, in a deposition taken in another case. This deposition was taken November 22nd, 1961, after the appeal was taken in the case at bar. The matter, therefore, could not have been presented to the trial court.

By Rule 28.18 of the Rules of Criminal Procedure, it is provided that the Rules of Civil Procedure governing practice and procedure in the Appellate Courts shall govern the practice and procedure in said Appellate Courts in criminal cases, except Rules 82.16, 83.06(b) and 83.17.

[5] Civil Rule 83.13 provides that apart from questions of jurisdiction of the trial court over the subject matter and questions as to the sufficiency of the pleadings to state a claim upon which relief can be granted, or a legal defense to a claim, the appellate court shall not consider matters except such as have been presented to or expressly decided by the trial court. We, therefore, cannot order a new trial by reason of the alleged newly discovered evidence.

[6] Furthermore, aside from the above rule it has been held many times that newly discovered evidence, that is merely impeaching in character, does not warrant the granting of a new trial. Davis v. Illinois Terminal R. Co., Mo., 326 S.W.2d 78; Hayes v. Adams, 241 Mo. App. 560, 244 S.W.2d 123; Ragsdale v. Tom-Boy, Inc., Mo.App., 317 S.W.2d 679.

Finding no reversible error in the record the judgment is affirmed.

RUDDY, P. J., and WOLFE, J., concur.

In the Supreme Court of Missouri
State of Missouri, Plaintiff
v.
Edward Rutledge Gish, Defendant
Case No. 31109

APPLICATION FOR TRANSFER

Now comes the defendant and prays that this Honorable Court grant a transfer of the above case, being Case No. 31,109, from the St. Louis Court of Appeals for the reason that the following matters are of general interest and importance and require re-examination:

1. The opinion of the St. Louis Court of Appeals in the above case held that an appellate court had no right to rule on whether a new trial should be granted on the ground of "newly discovered evidence" if such evidence is discovered after the time has expired for filing a new trial motion before the trial court.

2. The procedure for filing a transcript of the proceedings in the trial court does not provide for review of the action of an appellate court on the propriety of refusing to order additions or corrections to the submitted transcript.

WHEREFORE, defendant prays that this Honorable Court transfer the above cause for argument and hearing in this Court.

JOHN M. CAVE
107 West 5th St.
Fulton, Mo.
Attorney for Defendant

SUGGESTIONS

The opinion of the St. Louis Court of Appeals (p. 7) states:

"Civil Rule 83.13 provides that apart from questions of jurisdiction of the trial court over the subject matter and

questions as to the sufficiency of the pleadings to state a claim upon which relief can be granted, or a legal defense to a claim, the appellate court shall not consider matters except such as have been presented to or expressly decided by the trial court. *We, therefore cannot order a new trial by reason of newly discovered evidence.*"

Regardless of whether the newly discovered evidence mentioned in appellant's brief were merely impeaching or not, the principle announced leaves any party, whether a defendant in a criminal case such as this or a party to a civil suit, wholly without a possibility of relief if he is not permitted to present and obtain a ruling on evidence newly discovered without lack of diligence which first comes to his attention subsequent to the time for filing a motion for new trial before the trial court. No attorney, no matter how careful in preparation, no jury, no matter how sincere and dedicated to an attempt to attain justice, and no trial judge, no matter how astute, can be certain that all evidence has been presented and weighed. Assume, for example, that the main witness (or perhaps the only witness) has withstood a searching and gruelling cross-examination, and on the basis of his testimony a verdict is reached. Assume, further, that after the time for filing a motion for new trial has expired, such witness, either voluntarily or inadvertently, retracts his testimony, admits that he was mistaken or perjured himself, or otherwise himself destroys the evidentiary value of his testimony. Surely, the party who was defeated by such testimony should have an opportunity to present that matter to a court before appeal has finally been ruled on and determined. Procedures permitting such a ruling during a "continuation of the proceeding in the trial court" (Sup. Ct. Rule 28.02) should be available to an appellate court during the appeal, would not convict the trial court of error because such question could not, under the circumstances outlined, have been presented to the trial court, and would expedite the determination of lawsuits. It would, in fact, cause litigation to "come to an end sometime" because it would not require the possibility

of an entirely separate suit on the same issues or subject the party affected to a determination that his cause is res adjudicata and leave him without remedy.

With regard to point 2 of defendant's Motion for Transfer, this involves a matter which cannot apparently be brought up before the court under the existing rules. Rule 82.12(c) provides in part:

> "If anything material to either party is omitted from the transcript by error or accident or is inadvertantly misstated therein, the . . . appellate court thereafter, on a proper suggestion or of its own initiative, shall direct that the omission or misstatement shall be corrected. . . ."

The determination by an appellate court after filing suggestion of error or correction appears to be final. The only matters which can be considered on motion for rehearing are "material matters of law or fact overlooked or misinterpreted by the court, as shown by its opinion" (Sup. Ct. Rule 83.16). If such suggestion is not mentioned in the opinion, it is not a proper matter for motion for rehearing, and such motion for rehearing is the basis for transfer to the Supreme Court (Sup. Ct. Rule 84.05). No attorney and no trial judge can be expected to recall verbatim the testimony in the various cases in which they have participated and by the time after trial motions are filed and the transcript is prepared a considerable time has elapsed. If a transcript is not accurate and complete, both counsel and the court who must ultimately rule on the issues are obviously at a disadvantage. Unless the accuracy of the ruling of the appellate court can be submitted for further consideration, a litigant who believes that the transcript furnished is not accurate and complete is prevented from even presenting his argument for review.

In the instant case, defendant obtained a recording of the trial proceedings and submitted suggestions to the St. Louis Court of Appeals to correct the transcript. Such motion was denied, and it appears that defendant under existing rules is not able even to argue the propriety of such ruling. It is granted

that courts are presumed to act in accordance with the law, but under existing procedures it appears that a review of the action of an appellate court in the situation which exists here cannot be had to determine whether such action was proper. It may be that such ruling was based upon a determination that the suggested corrections were not material, and such basis may be entirely correct, but such finding does not overcome the difficulty that defendant is apparently denied an opportunity to have such ruling tested.

In view of the general interest and importance of the questions and principles presented it is respectfully submitted that the existing law be re-examined for a determination of these matters.

Respectfully submitted,
JOHN M. CAVE
107 West 5th St.
Fulton, Mo.
Attorney for Defendant

No. 2—DECISION

No. 50528
Court of Appeals No. 31109
In the Supreme Court of Missouri
September Session, 1963
State of Missouri, Respondent
v.
Edward Rutledge Gish, Appellant

TRANSFER

Now at this day on consideration of appellant's application to transfer the above entitled cause from the St. Louis Court of Appeals, it is ordered that said application be, and the same is hereby denied.

Entered of record at the September Session thereof, 1963, and on the 13th day of January, 1964, in the above entitled cause.

No. 3—DECISION

State of Missouri (Plaintiff), Respondent

v.

Edward R. Gish (Defendant), Appellant

No. 31928

Motion to Quash Execution in Cause 31109

St. Louis Court of Appeals

January Session, 1965

Tuesday, March 2, 1965

Missouri

Now at this day this cause coming on for hearing, and the appellant coming not, either in person or by attorney, and comes the respondent by its attorney. The Court having duly considered respondent's motion to dismiss the appeal, filed herein December 30, 1964, doth order that said motion be and the same is hereby sustained. Whereupon it is ordered by the Court that said appeal from the order of the Circuit Court of St. Charles County be and the same is hereby dismissed; and that appellant pay the costs of this appeal.

No. 4—DECISION

No. 51449

Court of Appeals No. 31928

In the Supreme Court of Missouri

January Session, 1965

State of Missouri, Respondent

v.

Edward Rutledge Gish, Appellant

TRANSFER

Now at this day, on consideration of appellant's application to transfer the above-entitled cause from the St. Louis Court of Appeals, it is ordered that said application be, and the same, is hereby denied.

Entered of record at the January Session thereof, 1965, and on the 12th day of April, 1965, in the above entitled cause.

No. 5—OPINION

STATE of Missouri, (Plaintiff) Respondent,

v.

Dr. Edward Rutledge GISH, (Defendant) Appellant.

No. 31495.

St. Louis Court of Appeals.

Missouri.

March 17, 1964.

Rehearing Denied April 13, 1964.

Prosecution of motorist for speeding. From a judgment of the Circuit Court, Warren County, George P. Adams, J., the defendant appealed. The St. Louis Court of Appeals, Wolfe, J., held that discrepancies in testimony of officer who had arrested the defendant after clocking him at night for speeding as to where the arrest had actually occurred went to the credibility and weight to be accorded the officer's testimony but did not entitle the motorist to a directed verdict of acquittal.

Affirmed.

John M. Cave, Fulton, for appellant.

Donald E. Dalton, St. Charles, Robert Hoelscher, Pros. Attys., Warrenton, for respondent.

WOLFE, Judge.

The defendant-appellant was charged, under Section 304.010, subsection 2(3), RSMo 1959, V.A.M.S., with driving a motor vehicle faster than 65 miles per hour over an undivided federal highway in the County of St. Charles, Missouri, between one-half hour after sunset and midnight on September 18, 1960. The case went to Warren County on a change of venue and was tried in the Circuit Court of Warren County to a jury. There was a verdict of guilty, and punishment was assessed at a fine of $100. After a motion for a new trial was overruled, defendant was granted allocution and judgment and sentence were pronounced. The defendant appeals.

The State's evidence consisted of the testimony of the arresting officer, Missouri State Highway Patrolman Donald J. Med-

ley. He testified that he was patrolling Highway 40-61 in St. Charles County. This is an undivided two-lane federal highway, one lane for eastbound and one lane for westbound traffic. His car was a 1960 Dodge with a calibrated speedometer which had been checked for accuracy both before and after the occurrence here in question. By both checks it was accurate to the mile through speeds of 45 to 80 miles per hour.

Between eleven and twelve o'clock at night he was driving the patrol car westwardly on Highway 40-61 in St. Charles County, when his attention was attracted to the defendant's car. It was traveling ahead of him behind a tractor-trailer, and it turned out of the westbound lane into the eastbound lane to pass the tractor-trailer ahead. The patrolman turned out in pursuit of the defendant's car, and maintaining a fixed distance behind it he began clocking its speed. For about a mile he checked the speed of the defendant's car, and it was traveling at 80 miles per hour. He then speeded up the patrol car, turned on a red light, and signaled the driver to go over to the shoulder of the road. He stopped behind the defendant's car. He said that the stop was made about one-half mile east of where Highway N intersects Highway 40-61. Here he made the arrest and took the defendant to the Sheriff's office in St. Charles.

The defendant testified on direct examination that at no time did he travel in excess of 65 miles per hour over the stretch of highway in question. He stated that the last vehicle he passed before being stopped by the officer was a cattle truck and not a tractor-trailer. He was asked on cross-examination how fast he traveled as he passed the vehicle, and he said at least 70 miles per hour.

[1] The first point raised by the appellant is that the court should have directed a verdict for the defendant, as the State's evidence was not sufficient to prove the defendant guilty beyond a reasonable doubt. He contends that because of the speed and the distances testified to by the arresting officer, defendant's car could not have been stopped by the officer at the point where the officer said it was. Counsel for the defendant

cross-examined the arresting officer as to the location of various landmarks in the area of the pursuit and arrest. He elicited from the officer estimates of the distances between the landmarks. He seeks, by applying such distances to the speeds the car was traveling, to show that the arrest must have taken place one-half mile beyond the place where the officer stated that the defendant's car was stopped by him. It is, of course, of no material significance where the arrest was made if the defendant did, in fact, exceed the speed limit. Any discrepancies as to the place where the arrest was made might possibly go to the credibility of the testimony of the officer, but whether or not he was to be believed was for the jury to determine.

The second point raised is that the court erred in permitting the State to question the defendant about his speed at a time and place different from the evidence offered by the State, "thereby permitting defendant to be cross-examined beyond the scope of his direct examination, and allowing defendant to be convicted solely on his own testimony."

[2, 3] Section 546.260, RSMo 1959, V.A.M.S. provides that a defendant who testifies in his own behalf "shall be liable to cross-examination, as to any matter referred to in his examination in chief. . . ." The defendant here had testified on direct examination that he at no time exceeded a speed of 65 miles per hour after entering an area known as Dardenne Flats. On cross-examination he was asked how fast he was traveling at the time he passed the truck. He stated that he was going at least 70 miles per hour. It was the view that the officer had of the defendant passing the truck on a hill that caused him to take up the pursuit of the defendant, and it was related to the matter upon trial. The prosecution is not confined to a mere categorical review of the evidence given by defendant on direct examination. He may be examined in detail as to matters generally referred to in his examination in chief. State v. Scown, Mo.Sup., 312 S.W.2d 782; State v. Hartwell, Mo.Sup., 293 S.W.2d 313; State v. Kaufman, Mo.Sup., 254 S.W.2d 640. We find no merit in this point.

[4] The third point raised is that the court erred in giving Instruction No. 5, which is as follows:

"The State of Missouri by information, charges the defendant, Edward Rutledge Gish, with the offense of speeding. Defendant pleads not guilty and it is upon the question of this defendant's guilt or innocence that you are now to pass.

"If you find and believe from the facts and circumstances in evidence in this case, beyond a reasonable doubt, that the defendant Edward Rutledge Gish, on or about September 18, 1960, in the County of St. Charles, State of Missouri, did then and there wilfully and unlawfully drive and operate a motor vehicle, to-wit: a 1957 Oldsmobile Sedan, over and upon U. S. Highway #40-61, an undivided Federal Highway, faster than 65 miles per hour during the hours for which lighted lamps are required by law, that is at any time from a half hour after sunset to a half hour before sunrise, you will find the defendant guilty of speeding as charged.

"Unless you so find the facts, you will find the defendant not guilty of speeding."

The instruction is in proper form, and the only error claimed is that there was not any evidence to support it. This we have covered in what we have heretofore said in relation to the first point raised. It follows that this point is also without merit.

[5] The last point raised is that the court erred in failing to grant a new trial on newly discovered evidence. This neither merits nor demands our attention. The rule as to granting a new trial upon such ground is set out in State v. Jones, Mo. Sup., 221 S.W.2d 137, l. c. 138, wherein the court said:

"This court has on different occasions approved the rules laid down in Berry v. State, 10 Ga. 511, in respect to new trials on the ground of newly discovered evidence, to wit, 'that the evidence has come to the knowledge of

the applicant since the trial; second, that it was not owing to the want of due diligence that it did not come sooner; third, that it is so material that it would probably produce a different result if the new trial were granted; fourth, that it is not cumulative; fifth, the affidavit of the witness himself should be produced or his absence accounted for; sixth, that the object of the testimony is not merely to impeach the character or credit of a witness.'"

The motion in question was heard with great patience by the trial judge and properly overruled, for it lacked every one of the elements required for granting a new trial upon the ground stated. State v. Gish, Mo.App., 371 S.W.2d 654; State v. Page, Mo.App., 192 S.W.2d 577; State v. Gibbs, Mo.Sup., 186 S.W. 986.

There are no prejudicial errors in this record, and the judgment is affirmed.

RUDDY, P. J., and FRANK W. HAYES, Special Judge, concur.

ANDERSON, J., not participating.

In the Supreme Court of Missouri
Case No. 31495
State of Missouri (Plaintiff), Respondent
v.
Dr. Edward Rutledge Gish (Defendant), Appellant

APPLICATION FOR TRANSFER

Now comes the defendant-appellant in the above cause and prays this Honorable Court to grant a transfer of the above case, being No. 31,495, from the St. Louis Court of Appeals, to review and to reverse said opinion, and in support thereof states to the Court:

I

That defendant was convicted on trial before a jury in the Circuit Court of Warren County, Missouri, of the offense of

driving a motor vehicle faster than 65 miles per hour over an undivided federal highway between one-half hour after sunset and midnight; that in the above-mentioned opinion, this conviction was sustained; that timely motion for rehearing and for transfer to the Supreme Court of Missouri was filed, and that said motion was overruled on April 13, 1964.

II

That there is involved herein a question of general interest and importance, to wit: the scope of cross-examination of a defendant in a criminal case. On his direct examination, Defendant testified that he did not exceed 65 miles per hour in the Dardenne Flats (an area approximately .8 to .9 miles in length) or west thereof, the arresting officer having testified that he clocked the defendant at 80 miles an hour from a point at or near the west end of the Flats while both parties were travelling west. On cross-examination, defendant was required, over objection, to answer that when he was passing a truck *east* of the Dardenne Flats he was going over 65 miles per hour. Thus, the defendant was compelled to testify beyond the scope of his direct examination in violation of Section 546.260, RSMo. 1959, and to testify against himself in violation of Amendment V to the Constitution of the United States and Section 19, Article I, Constitution of Missouri.

III

That in its opinion the St. Louis Court of Appeals failed to follow, in failing to grant a new trial on the ground of newly discovered evidence, the last controlling decision of the Missouri Supreme Court, to wit: *State v. Murray*, 91 Mo. 95, 3 SW 397, in which contradictory statements by the main witness for the State, which came to the knowledge of the defendant after the trial, formed the basis for the granting of a new trial on the ground of newly discovered evidence.

WHEREFORE, defendant-appellant prays that this Hon-

orable Court transfer the above cause to review and to reverse said opinion of the St. Louis Court of Appeals.

JOHN M. CAVE
107 West 5th St.
Fulton, Mo.
Attorney for Defendant-Appellant

No. 6—DECISION

No. 50,819
Court of Appeals No. 31,495
In the Supreme Court of Missouri
April Session, 1964
State of Missouri, Respondent
v.
Edward Rutledge Gish, Appellant

TRANSFER

Now at this day, on consideration of appellant's application to transfer the above entitled cause from the St. Louis Court of Appeals, it is ordered that said application be, and the same is hereby denied.

Entered of record at the April Session thereof, 1964, and on the 8th day of June, 1964, in the above entitled cause.

No. 7—DECISION

No. 51551
In the Supreme Court of Missouri
April Session, 1965
State Ex Rel. Edward Rutledge Gish, Relator
v.
St. Louis Court of Appeals, et al., Respondents

Now at this day, on consideration of the petition for a writ of Mandamus herein to the said respondents, it is ordered by the court here that the said petition be, and the same is hereby denied.

Entered of record at the April Session thereof, 1965, and on the 14th day of June, 1965, in the above entitled cause.

## APPENDIX B

### STATUTE

# AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES

### ARTICLE XIV

### Citizenship Rights Not to Be Abridged

1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, nor shall any State deprive any person of life, liberty or property without due process of law, nor deny to any person within its jurisdiction the equal protection of the laws.

Office-Supreme Court, U.S.
FILED
DEC 6 1965
JOHN F. DAVIS, CLERK

# IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1965

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No. 519

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EDWARD RUTLEDGE GISH, *Petitioner*

*v.*

STATE OF MISSOURI, *Respondent*

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## PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE UNITED STATES

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## PETITION FOR REHEARING

---

EDWARD RUTLEDGE GISH, *Pro Se*

# IN THE
# SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1965

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No. 519

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EDWARD RUTLEDGE GISH, *Petitioner*

*v.*

STATE OF MISSOURI, *Respondent*

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## PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE UNITED STATES

---

## PETITION FOR REHEARING

---

EDWARD RUTLEDGE GISH, *Pro Se*

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### CERTIFICATE OF GOOD FAITH AND SERIOUSNESS OF INTENT IN PETITION FOR REHEARING

The Petitioner approaches the Court not to delay nor to obstruct justice, but to further it, because he challenges the criminality within the Courts which surrounds the Petitioner's causes.

The concept is foreign to American Jurisprudence that the Supreme Court of the United States is to be knowingly deceived by the State through the preparation of documents altered with criminal intent for the Court to review, records which the Petitioner had to submit; and that collusion, conspiracy, fraud, and deception should continue in the State

Courts at the very time the Supreme Court of the United States has the Petition under review.

Therefore the Petitioner MUST RETURN FOR REHEARING BOTH TO PROTECT HIS RIGHTS BEFORE THE COURT AND TO PROTECT THE COURT ITSELF FROM THE ACTS OF THOSE WHO WOULD MAKE THE SUPREME COURT OF THE UNITED STATES AN ACCESSORY AFTER THE FACT TO CRIMINAL CONSPIRACY ALLEGED TO BE OCCURRING IN THE COURTS BELOW AT THE TIME THE PETITION IS BEFORE THE COURT.

Edward Rutledge Gish

EDWARD RUTLEDGE GISH
*Petitioner, Pro Se*

## CERTIFICATE OF SERVICE

This is to certify that on 4. December 1965 copies of the instant petition were sent by certified return receipt United States Mail to Prosecuting Attorney Donald Dalton, St. Charles, Missouri, and mailed also to the Clerk of the St. Louis Court of Appeals; to the Clerk of the Warren County Circuit Court; to Attorney General Anderson, State of Missouri; to the Honorable Warren E. Hearnes, Governor of the State of Missouri, and to others.

Copies of Statement and Motion constituting Exhibit A, page 7, have been sent again to Prosecuting Attorney Donald Dalton, 3 December 1965. All others named had had copies when Exhibit A was originally sent to the US Supreme Court October 1965.

EDWARD RUTLEDGE GISH

# IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1965

No. 519

EDWARD RUTLEDGE GISH, *Petitioner*

*v.*

STATE OF MISSOURI, *Respondent*

## PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE UNITED STATES

## PETITION FOR REHEARING

EDWARD RUTLEDGE GISH, *Pro Se*

As permitted under Supreme Court rule 58 (2) the Petitioner files a Petition for Rehearing in 519 O.T. 1965.

The grounds are those relating to actions and events occurring since the original petition was printed and lodged 9 Sept. 1965. These grounds are not only substantial and controlling, but raise the question clearly whether the integrity of the Supreme Court of the United States has not been challenged by the actions alleged as adverse to the constitutional rights of the Petitioner under the Federal Fourteenth Amendment.

After the printed petition in Cause 519 O.T. 1965 had been forwarded, the Petitioner went to the St. Louis Court of Appeals 31 Aug. 1965 to obtain documents to complete the docketing. On that morning the Petitioner saw stamped within the

copy of the Petition for Coram Nobis, whereon the Supreme Court of the USA had stamped July 1965 on the cover,

"FILED ST. LOUIS COURT OF APPEALS 2 June 1965." At the time this document was stamped July 1965, in Washington, D.C., this date June 2, was not on the document, but was inserted between 24 and 31 August. This was done by someone within the Court or Clerk's office. The Petitioner had no knowledge of it, and the State never at anytime produced any evidence that it was aware of any other jurisdictional situation other than that revealed in Prosecuting Attorney Dalton's letter to Judge Adams, which agreed with the Petitioner's knowledge that no jurisdiction had been extended.

Less than twenty-four hours later when the Petitioner was at sea (Sept. 1, 1965) the conspiratorial nature of this date impressed itself on his mind.

Stamping this date . . . June 2 . . . on the Petition for Coram Nobis in Cause 32149 without the knowledge of the State or the Petitioner was an act of conspiracy completely altering the status of Cause 32362 as well as 32149, in the St. Louis Court of Appeals.

By cable, and Motion to the Supreme Court, mailed from Europe, the Petitioner called attention of the Court to the fact that this was an act of criminal deception of the Federal Court as well as an act with conspiratorial intent adverse to the Petitioner. The Clerk's office filed the motion. However, due to the fact that a document alleging even more serious action with criminal intent, and direct and premeditated deception of the US Supreme Court was returned by the Clerk's office to the Petitioner even while the Petition was still alive and under review in the Supreme Court, the Petitioner is forced to call this once again to the Court's attention. There is no evidence that the Court did in fact receive, see, and review, only that the motion went into the file.

After all other papers had been lodged, there remained to be

filed the transcript of the proceedings in the Warren County, Missouri, Circuit Court, taken 28 June and 26 July 1965. This was on the Petition for Coram Nobis sent to the Circuit Court as part of Cause 32149 in the St. Louis Court of Appeals. The transcript in Cause 32362 is a fraudulent document prepared while the Supreme Court had the Petition before it, and the Petitioner had to file it as a document prepared with criminal intent to deprive the Petitioner of his constitutional rights AT THE VERY TIME THE SUPREME COURT HAD THE CAUSE UNDER REVIEW.

This was clearly pointed out in a statement to the USSC which accompanied a motion to the St. Louis Court of Appeals to set aside its decision adverse to the Petitioner taken ON ITS OWN MOTION. THIS DECISION IS BASED ON THE TRANSCRIPT WHICH HAD BEEN CLEARLY AND FIRMLY CHALLENGED AS A CRIMINALLY ALTERED DOCUMENT, NOT EVEN BEING A RECORD OF THE PROCEEDINGS IN THE COURT BUT PREMEDITATIVELY FRAUDULENT IN CAUSE 32362 AND BEARING ON and being a part of Cause 32149 in the St. Louis Court of Appeals.

Fraud, conspiracy, collusion against the Petitioner are alleged to have occurred within the Courts of the State of Missouri after the Petition was lodged in Cause 519 O.T. 1965, and in such manner as to hold the Supreme Court's rights and dignities in contempt. It appears this makes the Supreme Court of the United States an accessory after the fact unless it now protects the Petitioner's rights which are bound to the integrity of the Supreme Court.

The Petitioner had twice written to the Clerk's office of the US Supreme Court asking for confirmation of the date June 2nd stamped on the Petition for Coram Nobis, pointing out that this was important for action in the courts below. No reply was received. In view of this fact and the return by the Clerk's office of the document alleging criminal deception of

the US Supreme Court when the Petition in 519 O.T. 1965 was under review, the Petitioner then lodged the original Review to this effect with the Hon. Associate Justice Brennan so that the Court could act SUA SPONTE, for it is unheard of that such serious allegations should not be heard or investigated prior to decision on the Petition.

That the Supreme Court has never called up the records from the lower Courts because of alleged criminal deception of the USSC is said to be the rule. If this is the status of records from below then this is a case where the rules obstruct the cause of justice.

The Petitioner respectfully calls attention to "WE HAVE CONSISTENTLY RULED THAT THE INTEREST IN FINALITY OF LITIGATION MUST YIELD WHERE THE INTERESTS OF JUSTICE WOULD MAKE UNFAIR THE STRICT APPLICATION OF OUR RULES" United States v. Ohio Power 353 US 98,102-5.

The Petitioner has initiated correspondence with the FBI and the Attorney General in the Department of Justice regarding the allegations supra.

The Statement to the Supreme Court for Review of Actions Below, AFTER THE CAUSE was lodged, and a copy of the Motion to the St. Louis Court of Appeals to set aside its decision based on its own motion, in 32362 were returned by the USSC Clerk's office without filing even while the Court had the case in review. Therefore the COURT COULD NOT HAVE HAD THESE FACTS BEFORE IT AT THE TIME OF DENIAL OF CERTIORARI. The original of these papers was returned to the Court of Hon. Justice Brennan BEFORE the Petitioner had received the Court's denial of certiorari in November 1965, but reached him AFTER the denial of certiorari.

The Petitioner now returns to petition for rehearing with the most serious allegation that can be made, namely, parties below have attempted to make the Supreme Court of the

United States party to the conspiracy within the courts to deprive the Petitioner of his constitutional rights to due process of law and the full and equal protection of the law. If the US Supreme Court will not set aside its rule and call up all records, communications, and sound tracks of the trials and hearings, the Court will in fact let the rules stand above the Constitutional rights of the citizen and thereby be party to the adverse actions to the rights of the Petitioner in Cause 519 O.T. 1965. Let the Court be *PRO LEGE SAEPE, SED PRO PATRIA SEMPER.*

At a time when once again our Americans are dying believing they are defending a country of free men under law protected by courts of UNQUESTIONED INTEGRITY, let the Court defend those beliefs of our citizens which are also those to which the Petitioner yet clings. Once again the Petitioner asks the Court to call up all records, sound tracts, and documents in all files and defend those principles for which this Petition stands.

Those who dare to defile the Supreme Court of the United States must be challenged and the facts of the truth of the Petitioner's allegations determined. If it is not done now, WHERE WILL IT STOP? The integrity of the Courts will not be upheld by the Supreme Court of the United States permitting lower courts to submit documents altered with criminal intent as valid documents, nor by allowing documents to come forward which have been fraudulently prepared WHILE THE SUPREME COURT HAS THE CAUSE UNDER ITS OWN REVIEW. This is certainly proof positive of the allegations in the original petition.

The Petitioner has no choice except to fight to defend himself and the integrity of the Courts to the very last. He prays that the Court grant a case of first impression and call up the records. No publicity need ensue. However, the rights of citizenship must be defended as well as the integrity of the Su-

preme Court itself. It is in the interest of all that the Petition for Rehearing be granted, and action taken SUA SPONTE, PRO LEGE, PRO GREGE, PRO PATRIA.

Respectfully submitted,

EDWARD RUTLEDGE GISH,
*Pro Se*

Submitted as Exhibit A, the (original of which had been sent to the Hon. Associate Justice Brennan) nine copies of, "To the US Supreme Court; Review of Actions in Courts Below Bearing on the Petition in 519 OT" and "MOTION TO THE ST. LOUIS COURT OF APPEALS en banc to set aside decision, namely, 'THE COURT UPON ITS OWN MOTION STRIKES THE PURPORTED NOTICE OF APPEAL AND TRANSCRIPT FROM ITS RECORDS.'" These are claimed as part of the Petition as if fully set out therein.

EDWARD RUTLEDGE GISH
Callaway Bank Building
Fulton, Missouri
29 November 1965